

**CITY OF NEWARK  
DELAWARE  
COUNCIL MEETING MINUTES**

**March 26, 2018**

Those present at 6:30 p.m.:

Presiding:	Deputy Mayor Stu Markham District 1, Mark Morehead District 2, Jerry Clifton District 3, Jen Wallace District 4, Chris Hamilton District 5, Luke Chapman
Absent:	Mayor Polly Sierer
Staff Members:	Acting City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Communications Manager Kelly Bachman Deputy City Manager Andrew Haines Finance Director David Del Grande Planning and Development Director Mary Ellen Gray

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1. Mr. Markham called the meeting to order at 6:30 p.m.

2. MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: TO REMOVE ITEM ES-A.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.

Absent – Sierer

Nay – 0.

3. **EXECUTIVE SESSION**

B. Executive Session pursuant to 29 *Del. C.* §10004 (b)(2) for the purpose of preliminary discussions on sales and leases of real property

MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: THAT COUNCIL ENTER EXECUTIVE SESSION FOR PRELIMINARY DISCUSSIONS ON SALES AND LEASES OF REAL PROPERTY.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.

Absent – Sierer

Nay – 0.

Council entered executive session at 6:30 p.m. and exited executive session at 7:00 p.m.

4. Mr. Markham asked for a moment of silence and the Pledge of Allegiance.

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: TO REMOVE ITEMS 3C AND 7A.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.

Absent – Sierer

Nay – 0.

MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: TO MOVE UP ITEM 11A1 TO FOLLOW ITEM 6B.

MOTION PASSED. VOTE: 5 to 1.

Aye – Clifton, Hamilton, Markham, Morehead, Wallace.

Absent – Sierer

Nay – Chapman.

5. 1. **PUBLIC PRESENTATIONS:** None

6. 2. **ITEMS NOT ON PUBLISHED AGENDA**

A. Elected Officials who represent City of Newark residents or utility customers – None

7. 2-B. **UNIVERSITY**  
(1) Administration

**4:40**

Caitlin Olsen, UD Government Relations, announced that Fandemonium will take place on April 21. It is the spring football game that includes fun and games for the whole family. The event starts at 1:30 pm with the game starting at 3:30 pm. She noted there is also a softball and baseball game that day so she asked all to be aware of the increased traffic in the area. Ag Day is April 28 from 10:00 am to 4:00 pm and is also a family friendly event. She provided a “Quick Facts” sheet on current UD growth and a larger more detailed booklet. She noted both are available online as well at <http://ire.udel.edu/>, which is the Institutional Research and Effectiveness website. She does not have the up-to-date admission numbers for UD. She thanked Mr. Chapman for his service to the City and wished him well on retirement from Council. She wished everyone well in the upcoming election.

Mr. Clifton noted that he had asked in Ms. Olsen’s absence about University Courtyard and the fact that the property was coming off the tax rolls in thirty years from the date of the agreement to revert to UD, which was made with the City around 1999. He believes the date of the changeover is now 2019. He noted that is a loss of \$77,000 per year in tax revenue which equates to a little over a penny tax increase if the cost were passed along to City residents. He said the University never got back to him on his inquiry. Ms. Olsen indicated she would look into it.

Mr. Hamilton asked Ms. Olsen to have a little more coordination between UD and the City when UD does maintenance issues including water line flushing. He noted he had previously asked for updates on the South College Avenue dormitory project. He believes there will be a generator and HVAC unit and he would like to make sure UD works with the City to reduce any issues with excess noise.

8. 2-B-2. **STUDENT BODY REPRESENTATIVE:** None

9. 2-C. **LOBBYIST:**

**10:20**

Rick Armitage said there was a DEFAC meeting the previous week and they found an additional \$48 million from revenue in the current fiscal year with another \$52 million predicted for next year resulting in approximately \$100 million in operations. In the Transportation Trust Fund there was an increase over two years of \$20 million; \$12 million in this current fiscal year and \$7 million next year. Their next meeting will be April 16. To date, the revenues continue to be okay. He is unsure why the real estate transfer tax appears to have declined over the past two months when they were doing predictions, because prior to that, the transfer tax was one of those things that appeared to be increasing because of what they had done legislatively last year. He is not sure how that will go forward, but he knows that impacts the City budget.

HB177 was passed and is scheduled to go to the Governor for signature on Thursday, March 29. There will not be a lot of ceremony around it, but it will be signed so it will become law.

Mr. Armitage stated that Senator Townsend is unsure he wants to be the sponsor of the email exemption bill. Mr. Armitage spoke to the lobbyist from the Southern Association of Towns, and although they are interested they need to follow up with their members. The same holds true with the League of Local Governments. He believes the likely answer will be they will be looking for the confidentiality the legislature enjoys in their own emails that they would probably try and pass something that is enabling legislation to allow each jurisdiction to decide for themselves.

Mr. Markham reminded Mr. Armitage the request only refers to constituent emails, not Council persons or any public group or staff. Mr. Armitage asked if constituent emails to a member of Council or to staff as well. Mr. Markham said staff is not protected.

Mr. Armitage met with the sponsor for HB321, Evergreen Exception and Contracts. The problem that Newark has is minor compared to the entities that have contracts to renew telephone contracts or alarm systems in people's houses. He has asked to consider exempting municipalities from this, because at least in Newark there were very few instances where that happened and the City was not causing the problems that generated the genesis of this legislation being reduced. He believes the two sponsors will probably let that happen. HB270 was not heard the previous week due to inclement weather. Council has provided comments for him to bring forward at the committee hearing. He believes the difference is the focus is on drinking water in contrast to stormwater at this point in time. Hopefully when there is a committee hearing, there will be an opportunity to ask more questions and he will be able to come back with some additional information.

SB10, the minimum wage bill, was on the agenda in the Senate to help it pass, it still may be restored by the sponsor, there is a lot of political maneuvering going on behind the scenes around that piece of legislation. He needs to work with Ms. Bensley and the attorney that is representing Sussex County on the opioids issue as they would like to do a presentation to Council. He will put Jamie Nutter in touch with Ms. Bensley to coordinate.

There was discussion between Newark and the County on the proposed hotel tax. There may be some enabling legislation that would allow the counties and the municipalities to do something like that, but Newark would not want to do just their charter or just legislatively because that would displace some of the hotel nights the City gets out into the County since Newark prices will then be higher. If something is done it needs to be done in conjunction with the County.

Ms. Wallace said whether she agrees with how the state has funded this windfall or not, that is a separate topic of conversation for a different meeting. She thinks this might be an opportunity for Newark to up PILOT again or die trying. In addition, she would like to just make clear, that she is not in favor of moving forward with an email exemption and believes she is in the minority. She does not think it the best way to go. She believes it would be better to remain the way it is currently. Her concern with the proposal that was presented a few weeks ago, was moving the emails in-house and having staff being able to be in between with those emails. She believes residents would not like that, but she still thinks that those emails should be FOIAable and she is not in favor of looking for an exemption from FOIA for any of their emails.

Mr. Morehead asked if there was a vote taken or direction given at the last Council meeting.

Mr. Markham said it was a conversation at the table as there were resolution two meetings ago. The direction given was to pursue a similar exemption that the state legislature has in protecting constituents as there is an expectation of privacy, but they have no way to opt out. They cannot retrieve their email if they send it to a Council member. The actual resolution looked like they would go into the state archives because it had to forward it on to the local email system. The matter needs to return to Council for another conversation maybe the thing is they need to define what is personal and what it forwardable. He gets email from people with the majority of it pertaining to his kids, his neighbors, friends all that, and then the one line that says, Newark should do such and such or whatever. His question is does he need to forward the whole email, even though it contains a lot of personal information and do the email addresses become public. There was a lot of conversation and his objection was the conversation was not held before the resolution was presented. He said there are a lot of consequences to how it is presented and Council needs to talk about those consequences.

Mr. Morehead said he was in attendance for the meeting but did not know if there had been any formal direction since then. He agrees the matter needs to return to Council. He said on the surface he agrees with Ms. Wallace, open is better, but warrants a bigger conversation.

Mr. Armitage will provide further information when he hears back from the League of Local Governments.

Mr. Hamilton requested the email matter be placed on a future agenda. He suggested April 23. Mr. Markham said he is fine with that and believes there are many underlying issues to discuss relative to the subject. Mr. Hamilton said he is okay with anything he sends but noted there are some people who have sent things to him have an expectation of privacy. Ms. Bensley said she would prefer it not go on the April 23 agenda because her office is trying to get an election held in the next several weeks. She also recommends all of Council be present. She recommends the end of May for discussion to return. She also noted if there are specific questions that Council would like answered she would ask they be forwarded to her in advance so she may do the appropriate research.

**10. 2-D. CITY MANAGER:**

**21:56**

- Acknowledged City staff who worked during the recent storms to keep the roads clear and the lights on.
- Reported the Five and Wine race and the Wine and Dine event was on Saturday, March 24.
- The rescheduled and relocated egg hunt was held Sunday, March 25. He thanked City staff and volunteers for their efforts on both events. Thanked UD for allowing the City to hold the egg hunt inside the Bob Carpenter Center on short notice. It was a great event with a total of 1,200-1,400 people attending with approximately 20,000 eggs stuffed by volunteers.
- Mentioned City offices will be closed on Friday, March 30 due to Good Friday. As such, recycling normally collected on Thursday will be collected on Wednesday and recycling normally collected on Friday will be collected on Thursday. There will be no green Wednesday yard waste collection this week.

**11. 2-E. COUNCIL MEMBERS:**

**23:10**

**Mr. Chapman:**

- Thanked the residents of District 5 and said it has been an honor to represent them for the last six years. He asked all to remember to vote if they can and that there are three candidates for District 5. The City wants to see greater voter turnout at every election. He offered good luck to each candidate. He said to anyone that still has his contact information they may use him as a resource. He will be forwarding his contact information to the elected official who wins the seat. He said the incoming council member may use them as a resource as well.

**Ms. Wallace:**

- Reported there was is an election in District 3 as well and she encouraged all eligible voters to vote on April 10.
- Concerned about some of the outreach that has been done on the referendum to date. She referred to the Comcast Newsmakers Program. She believes the City should be careful about saying that there will be three questions and what those questions will be. She believes the outreach is indicating the referendum is a done deal. She thinks it would be a disservice to the residents by not explaining that everything has not been finalized.

**Mr. Clifton:**

- Remembered Wilmington Firefighter Jerry Fickes that perished in a fire in Canby Park. Mr. Fickes was a Newark resident and a longtime member of Aetna Fire Company. Mr. Clifton said he has been working with Parks & Recreation to consider naming a trail for Jerry Fickes. He believes it is a fitting gesture to honor his legacy. He would like to ask to put that Resolution on the agenda for April 23. The trail would be part of Rittenhouse Park which is owned entirely by the City. He noted both Mr. Chapman and Mr. Markham offered trails in their districts as well and although that was not feasible because of the trail system, he thanked both Mr. Chapman and Mr. Markham for their efforts. He looks forward to moving this forward with the assistance of the City. Mr. Markham agreed and asked Ms. Bensley to put the matter on the April 23 agenda.

**Mr. Hamilton:**

- Mentioned the League of Women Voters was having its forums at the Newark Senior Center on April 2 for District 5 and District 3 on April 3.
- Reported Parks & Recreation has a lot of great programs going on. He asked everyone to check the website.

**Mr. Markham**

- Thanked Mr. Chapman for his service to the City and representing District 5 for six years.

**12. 2-F. PUBLIC COMMENT:**

**29:23**

Amy Roe, District 4, said she was present to speak for the fourth consecutive meeting about the lead paint chips, grit and dust that contaminated residential yards from the Windy Hills Water tower when it was sandblasted 23 months ago in April 2016. She thinks it is very alarming the report on how this incident transpired and the modifications to the municipal code and contract language that Council requested from staff by the end of 2017 are not on the current agenda.

There is no debate on the health effects of lead exposure. Lead is a neurotoxin with irreversible side effects. Exposure to lead paint chips, grit and dust from sandblasting is dangerous to public health. Ingesting lead can cause neurological damage, behavioral and brain disabilities among children as well as

anemia, high blood pressure, kidney damage and reproductive effects including miscarriage, still birth and premature births among adults.

There are no safe levels of exposure to lead and there is no way to reverse the damage caused by lead exposure. The harmful effects of lead exposure can also take years to develop. She recently read that the National Institute for Occupational Health and Safety has determined that exposure to lead can lead to hearing loss.

For 23 months, Newark families have been exposed to dangerous amounts of lead in their backyards. That represents two full seasons of grass mowing, redistributing lead in the yard, on clothes and in their lungs. Two years of lead dust tracked into the house. Two years of exposure, the health effects of which may not be made apparent for decades. It is her belief the full extent of the contamination and how many yards are involved have not yet been disclosed by the City.

The contamination that remains under the water tower, on City property, which washes off down neighboring yards on its way to White Clay Creek has also not yet been disclosed in her opinion. She is asking Council to be proactive and to schedule a special meeting for the report to discuss modified changes to the municipal code and contract language to be discussed in more detail.

It is her opinion that two years is too long to wait on a health issue that should have been addressed immediately, but instead she believes was ignored by the City staff until the Freedom of Information Act request uncovered the issue.

Sarah Bucic, Wilmington resident, said she wanted to correct what she believes to be inaccuracies that were said at the last meeting. She said she has attended three consecutive meetings to speak on this topic. She said at the March 12 Council meeting, Acting City Manager Tom Coleman stated the bid on the one million-gallon Louviers water tower came in at \$100,000 cheaper than the three hundred thousand-gallon Windy Hills sandblasting project.

When referencing the June 2016 minutes, it is her opinion the Louviers water tower comparison does not apply. The Louviers water tower was not lead paint and did not require full containment. The City owned the surrounding property and there were no residential houses according to Tim Filasky.

Also at this meeting Councilman Todd Ruckle expressed concern having witnessed just two months prior what happened at the Windy Hills location. He asked about lead paint and taking soil samples in advance of the project for comparison. At the March 12, 2018 Council meeting, Acting City Manager Coleman stated that when the breach occurred at the Windy Hills water tower there was a shut down. He stated, "They did shut it down until it was cleaned." It is still not cleaned up.

She had two pages obtained by FOIA from the daily inspection reports that show no shutdowns occurred. Not the day the homeowner found the chips on his property nor the following day. On April 13, there was no shut down. There was a continued blast. On April 14, 2016, 95% of the tank was painted.

On February 26, 2018, Mr. Coleman stated that City staff was not able to get adequate direction from DNREC, up until this time. Yet, two weeks later he blamed the homeowner for not agreeing to the remediation plan.

She wanted to know who is going to be accountable to City residents. She asked what the full plan and who has seen the plan? She asked if Council has authorized the full plan as is required in the Newark Code.

At the March 12, 2018 meeting Acting City Manager Coleman stated, "There are only minor tweaks to the plan since Council had last seen it." She would like Council to confirm what those tweaks are. Also at the March 12, 2018 meeting, Acting City Manager Coleman stated, "They cannot begin work as it was not on City property." This same consideration of private versus the City property was not given to homeowners when the breach in lead paint chips, grit and dust contaminated the residential yards nearly two years ago and the public health of residents remains unprotected.

Mr. Clifton said he had a lengthy conversation with the homeowner earlier in the day and Mr. Clifton asked the Solicitor to weigh in. Mr. Bilodeau said the City has reached out to the homeowner to try to remediate and as of this afternoon, the City believes there is a tentative agreement in place to do the remediation. It needs to be presented to Council on April 23, 2018 and the plan is to move forward with that remediation as soon as Council approves it.

Mr. Morehead asked if Council needs to wait that long. He asked if a meeting could be scheduled. Mr. Bilodeau said it could be done earlier and he believes the additional remediation put the cost over the \$25,000 cost for the job so Council would need to approve as it is over the \$25,000 threshold.

Mr. Clifton said during his conversation with the homeowner he found out the co-owner of the property, his spouse is not going to be back in the country until later in the week, which means if this were to move forward it will be into next week before the City is apprised of whether it is acceptable to them or not. At that point the two-week window for advertising would bring the date up to approximately the organizational meeting. He is not going to be attending the organizational meeting and he would like to be here when the matter is discussed.

Ms. Wallace asked Mr. Bilodeau if this would qualify as an emergency meeting, which would negate the City from having to give as much public notice. Mr. Bilodeau said he would need to look at the wording of it. It may be grounds to have an emergency meeting. Ms. Wallace said she would be in favor of that and as one of the Council members up for re-election this may impact her more than some other Council members and she thinks this very important so she would be in favor of moving forward with an emergency meeting. Ms. Bensley said it would fall under the category of special rather than emergency meeting. An emergency meeting is when they can have a meeting with less than 24 hours' notice, a special meeting would be less than seven days. Usually an emergency meeting has a very high threshold and usually it involves a larger immediate public safety issue and while she recognizes the information that has been put forward, she does not know it meets the 24-hour threshold and less than seven days would be likely more appropriate.

Ms. Wallace asked what was minimal number of Council member consensus to have a special meeting. Ms. Bensley said there would need to be at least three Council members, the Mayor or the City Manager to request a special meeting to schedule one. Ms. Bensley said she would be hesitant to schedule a meeting until the City receives the signed agreement back from the homeowners because the City could theoretically schedule a meeting and have nothing to consider. Mr. Markham suggested after the other homeowner returns to town and has time to consider the agreement and reports to City staff, Council may consider a date that people can make a meeting.

Mr. Markham asked Mr. Clifton his availability. Mr. Markham said he would be available from mid-week of March 28 forward. Ms. Bensley reminded Council that Mr. Chapman is officially the Council member for District 5 until April 19. Mr. Markham suggested staff return to Council after they have an agreement and reviewed the agreement, ensure that everything is good to proceed. The City Secretary can notify Council to see their availability is.

Ms. Bensley said if Council is voting this evening on whether to have a special meeting, a vote of the majority present would be needed and that is four votes. If after this meeting there is a request for a special meeting, she would need it from three Council members in writing to schedule a special meeting per the rules of procedure. At the special meeting there would be a majority present to vote. Ms. Bensley said a consensus of the members present was acceptable and a formal vote was not necessary.

Mr. Chapman said he would be very interested to understand what the purpose of a special meeting is. He also wanted to make sure the homeowners will be present and will actively participate as he believes that has been an issue for the last 23 months.

Chris Locke, District 1 thanked Mr. Chapman for his six years of service. He was his Council member for three years. He thanked him for his professionalism, financial expertise and his respect for other people's different opinions and most importantly his sense of humor, which was needed many times.

**13. 3. APPROVAL OF CONSENT AGENDA:**

- A.** Approval of Council Meeting Minutes – March 12, 2018
- B.** Approval of Alderman's Report – March 12, 2018
- D.** Resignation of Jim McKelvey from the Board of Adjustment
- E.** ***First Reading – Bill 18-08 – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 24 and 30 Benny Street – *Second Reading – April 23, 2018****
- F.** ***First Reading – Bill 18-09 – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from RD (One-Family Semidetached Residential) to RM (Multi-family Residential/Garden Apartments) 0.44 Acres Located at 24 and 30 Benny Street – *Second Reading – April 23, 2018****

44:38

Ms. Bensley read the consent agenda into the record.

MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.

Nay – 0.

Absent – Sierer.

14. 4. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

15. 5. **APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:**

A. Reappointment of Robert McDowell to the District 3 Position on the Conservation Advisory Commission for a Three-Year Term to Expire March 15, 2021.

45:40

Ms. Wallace said she would like to recommend the re-appointment of Robert McDowell to the District 3 position on the Conservation Advisory Commission for another three-year term. Mr. McDowell was in attendance in the event anyone had any questions. She noted his resume and his application are in Council's packet. She thinks his expertise and his enthusiasm has been an asset to the CAC and she is happy that he wants to serve again.

There were no questions from the table and no public comment.

MOTION BY MS. WALLACE, SECONDED BY MR. CLIFTON: TO REAPPOINT ROBERT MCDOWELL TO THE DISTRICT 3 POSITION ON THE CONSERVATION ADVISORY COMMISSION FOR A THREE-YEAR TERM TO EXPIRE MARCH 15, 2021.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.

Nay – 0.

Absent – Sierer.

16. 6. **SPECIAL DEPARTMENTAL REPORTS:**

A. Approval of City Manager Position Profile, Advertising Locations, Recruitment Timeline, Recruitment Process and Interview Dates

47:12

Joellen Earl, GovHR said there were a few items on the agenda that need to be discussed. The approval of the position profiles, the advertising location, the recruitment timeline, the process and dates. The specific dates do not need to be finalized if Council is okay to work with the City Secretary with the weeks that were chosen.

She said to date, Council has received two documents. A marked-up document with the text to read and when the employee survey was completed and the community survey was completed she sent it again so Council can see the changes she made. In addition to that, Council received a mock-up with the pictures in it. It is the same text with the changes that were accepted, except for two things that she would like Council to consider. Ms. Earl reported that 62 employee surveys and 106 community surveys were received. That information was incorporated into the draft brochure that Council has.

She said when she received Council's edited comments, the requirement for bachelor's degree was changed to preferred and the plus or minus salary was taken out. She wanted to ask Council if they still want to do this as she believes Council should consider otherwise. The advertisement is either for a bachelor's degree or for an equivalent combination.

Mr. Chapman believes the suggestion was to remove master's degree in City Administration. Ms. Earl said the master's degree was preferred, but not required. But somebody changed the bachelor's to preferred. She would recommend there be a requirement for bachelor's, however if somebody comes forward with 30 years of experience and they have an associate's degree they can still consider that person with an equivalent combination.

That was her first question. The second one was there was a salary plus or minus figure in there. The reason why she recommends this be done is because it is not advisable to put out a brochure out across the nation, solicit candidates and somebody is expecting a much higher salary than the City is willing to pay. Therefore, the suggestion is to ask for their expected salary when they must submit their material to her if they are going to be considered further. If a plus or minus figure in depending upon qualifications, they can move off that and there is no requirement to pay that figure.

Mr. Markham opened the discussion to questions from the table.

Mr. Markham recalls the requirement was not to be in political science. A bachelor's degree was still required and he believes the remainder of Council was saying no to the political science or related field. He said he wanted a political science degree. Ms. Wallace said that was her recollection as well.

Ms. Bensley said when reading the comments back to Council one of the things that was said was that the bachelor's degree should be preferred instead of required and Council said that is what they wanted. She noted if that is not the case it can be changed, but that is what was said that night.

Ms. Earl said it could be worded to read, "Public administration, political science, or business administration, or related." Or it could say, "Bachelor's degree required." The idea is that they have a four-year degree. They could have a degree in engineering and be a very successful city manager or finance.

It could say bachelor's degree is required, master's degree is preferred. Usually that is in public administration or an equivalent combination, which still allows flexibility. After discussion, it was Council's consensus to take Ms. Earl's recommendation.

Mr. Markham asked what was listed about salary and what was removed.

Ms. Earl said it was \$150,000 plus or minus depending upon qualifications. She noted that is a movable figure. If they have somebody that is moving up and they are making \$120,000 and the City wants to offer \$130,000 they can do that. She would recommend picking a number and put it in that way so they get maximum flexibility. She would caution from getting a bunch of applications and somebody coming and saying, "I want \$190,000" and Council was not going to pay that. So that is why she recommends it.

Mr. Chapman said he does not have any preference but also feels like anybody that is applying for this position is probably going to do a simple Google search, see the City budget, and see what the top staff members are being paid currently, and understand that that is inside the range, typically. He added that he would want that person to have done a bit of research on the City. He noted Ms. Earl is a consultant and is a professional and part of the process is to offer her opinion. He believes Council should heed that advice.

Mr. Clifton agrees with Mr. Chapman that Ms. Earl was chosen due to her expertise. However, it seems to him if somebody is making \$120,000 and the City offers \$130-\$135,000 that does not put the City in a good negotiating position. He believes by the City putting it as a generic \$150,000 plus or minus, he is not sure everybody can comprehend that stuff. He would like it to remain as is and leave out the salary.

Mr. Hamilton said he was okay with leaving the salary out.

Mr. Morehead said he would recommend taking Ms. Earl's professional advice.

Ms. Wallace said she does not see the point of putting the salary in especially if the argument does not hold weight, but she would be okay either way.

Mr. Markham said Council consensus is to leave it out.

Mr. Morehead said when he looked at the front page and saw the picture he would prefer a different picture. Ms. Earl said the City provided the picture and asked for them to provide additional pictures for consideration. She will put them where Council desires in the profile. She noted with the way it is set up a more vertical photo would be better.

Mr. Morehead said in two place the wording says, "The City Manager is appointed by the Mayor and City Council." On the inside first page in the second chapter, it is in the second sentence. He also noted



on the third page under "Newark City Government" again, in the second sentence over in the other row in the second paragraph. It says, "City Council appoints the City Manager." This is true. The city charter is very clear about when the Mayor is acting as a member of Council the term is Council. The Mayor has no special authority in this process so it is technically incorrect to say, "The Mayor and Council". He believes it sends the wrong message. He asked the reference to be removed.

Mr. Morehead noted under Community Information it mentions the City is served by an interstate highway and two freight railroads. He does not believe that CSX stops in the City and they just pass through. He believes it is not fair to say they are served. He also mentioned the discussion about the capital referendum and the specifics around it he believes are open to further discussion.

Ms. Earl said originally, she had different wording for that. She asked if Council was okay with the first paragraph she wrote about the matter. She has the original and noted it was general.

Ms. Wallace said she was looking for the original paragraph. She thinks it is appropriate to mention the referendum as this will be one of the first tasks of the new City Manager if it passes. What she takes issue with is the specific amounts and the three questions. She thinks Council needs to talk about it more generally.

Ms. Bensley said to offer a little background on the evolution of that section, originally in the copy it only mentioned the Rodney project. In working with Acting City Manager Coleman, staff wanted to make sure that it was represented that that is not the only item that is potentially with the referendum. If specific numbers are not mentioned, that is one thing. The suggestion was to not make a representation that the Rodney project was the only thing that was going to be part of that election.

Ms. Wallace said that sounds reasonable to her. She suggested wording such as "this is what is potentially going to be on the referendum, or the questions haven't been finalized yet." There is wording that could be added that she would be comfortable with that. But just to say, "This is what the referendum will be" is technically inaccurate and she does not think the City should be putting inaccurate information in.

Mr. Morehead said his perspective was slightly different in that this is the public's first view of those numbers and he is not sure that is appropriate.

Mr. Markham asked if substitute wording was available for that as the goal at this time is to approve the profile, the dates, the process, and have consensus on the location and the timelines.

Mr. Chapman said the referendum is going to be history by the time there is the first interview. He does not understand why it is in there at all.

Ms. Bensley said the referendum is going to happen right in the middle of all the interviews.

Ms. Wallace said she sees Mr. Chapman's point. She does think it is appropriate to mention that this is part of the workload that is expected and the candidate will be expected to be knowledgeable about what is happening. She suggested saying the City has scheduled a capital referendum in June of 2018 and leave it at that. After discussion, there was consensus to say that.

Ms. Wallace said she did not like the photo and suggested staff offer additional photos for consideration. In addition, in two places on page three and at least on another page as well it was mentioned that half of the residents of the City are students. That is technically incorrect. More than half of the residents of the City are students. There are more students than there are permanent residents, so she thinks that should be corrected and suggested saying more than half would be technically correct.

Additionally, in the profile that she was concerned about was under the "Education Experience" on the second-to-last page, on the left-hand side towards the bottom. There is a statement, "Have the ability to work with a multi-member City Council who at times are divisive." She believes that is not necessarily putting our best foot forward and she thinks it should be removed.

Mr. Hamilton said page one still has the salary issue on it. He thought it was decided that they could not ask that. Ms. Earl said she did not believe the law was in effect yet, but that she can take that out.

Mr. Hamilton said in light of the last correction, he noted on page four, "Work to increase the morale of City employees as a relationship between City employees and City Council has been strained." He imagines that would apply to most cities at points in time. He believes that is an odd thing to put and was thinking that was not a good thing to include. He suggested removing the first sentence and he is not sure if he likes the rest of it.

Also, he noted, on the top of the page in the second column, "Assist in establishing protocols for conducting public meetings with the appropriate decorum and professional to project a positive image of the City." He said that is an interesting thing, he thought they got rid of rules of decorum because they work for the public and he thinks they have said bye-bye to that stuff. If that could be removed, he would appreciate it.

Ms. Bensley asked for clarity around the first portion of the comments, in that, she knows the suggestion was made to take out the first sentence, but then Mr. Hamilton said he did not like the rest of it.

Ms. Earl said she can remove the first clause of that sentence and just start it with, "The management team is strong and works well together" and keep the labor relations piece in there.

Mr. Markham said one of his concerns is that he believes some of the things are negative and he would like to stop at the facts and keep the negative pieces out. On the bottom of page eight, "Having an understanding of impact large university..." all the way down to, "...desire to work carefully and balanced with the home-owning residents with the university increased enrollment." He would stop there. They need to be able to balance them. Because it goes on and talks about having a negative impact. They know that but the goal here is to balance and that is his opinion.

Ms. Bensley read the proposed changes which included there will be a bachelor's degree required not preferred; leave out the salary number; change out the picture on page one. Simplify the wording around the referendum to simply say, "There will be a referendum on June 19th for various projects." Remove references to the Mayor in talking about the appointment of the City Manager. Change the number of freight railroads to one. Change the terminology for the population of students to say, "More than half of the City's population is students." Remove the statement about the divisive Council. Delete "salary history". Remove the first sentence in the first clause of the second sentence regarding the "work to increase morale" paragraph. Remove the paragraph regarding decorum protocols. End the sentence after the phrase "increasing enrollment" in the paragraph regarding the impact of the University.

Mr. Chapman noted the candidates that at least get an interview will more than likely listen to the minutes or read them and will understand the difference of the rosy picture that is sent out publicly and literally what it used to be as well as the comments and feelings about removing the honest stuff.

Ms. Bensley added there was one item that was sent to her that Council may want to update regarding the statement that says the City is currently seeking re-accreditation through CALEA. The City has just been awarded the gold-standard in re-accreditation, if that should be changed to reflect this and feature it in the profile. Council agreed that it should be updated.

Mr. Morehead asked if the political science reference was removed.

Ms. Bensley said she believes the consensus was just to say, "Bachelor's degree required".

Mr. Clifton asked there was any reason for the east coast leagues?

Ms. Earl said the International City and County Management Association was the national organization for city managers. Then regionally, it is nice to try and look at surrounding states, because not everyone is a member of ICMA. That is why she tries to do that.

Mr. Clifton asked for the south to be included, particularly Florida.

She said she can add Florida and noted the ICMA will be national. She noted there is a social media component and that is not reflected on this document which includes thousands of managers across the country that will get a direct email with this brochure, many of whom are in Florida.

She also uses LinkedIn, Twitter, and their own job board on the GovHR website. It will reach, but if Council wants her to call Florida, there may be an additional fee and currently she about is \$500 under budget.

Mr. Clifton believes the bigger point he is trying to make here is, in addition, she has the experience to know where the bulk of the candidates are located.

Ms. Earl said she believes primarily the candidates will be regional but there will be people nationally as well. That is why she recommends casting the wide net is because there could be somebody who wants to come back. If they do not do that they may not reach that person that could be from Delaware or the surrounding area.

She thinks it is robust, but Florida can always be added as well for some of the managers that might be in some smaller jurisdictions that cannot afford to be a member of ICMA. They may get it through her direct email, but she could not guarantee that would happen.

Mr. Clifton also asked if there is a benchmark that Ms. Earl has when she advertises a job in this area, that they get a larger number of applicants from North Carolina, South Carolina, for example? Is there already a benchmark to this, as to where the applicant pool seems to come from, when they apply for positions in say, the mid-Atlantic area?

Ms. Earl said it is usually regionally focused first. The bulk of the candidates will come from this region, and then there will be people from around the United States.

Mr. Hamilton asked that UD be included as he believes there are a lot of UD grads that have left the nest and gone all over the country. Some of his residents might say that is too much University of Delaware in this town.

Mr. Morehead and Mr. Markham were okay with the list and adding Florida.

Regarding the recruitment schedule, the following was noted:

Mr. Morehead said he is done traveling for a while and will make himself available whenever.

Mr. Clifton said he will be unavailable the week of April 15, and the week of June 25.

Ms. Bensley said the week of June 25 is scheduled for interviews. He would like to be present for the second interviews.

Ms. Bensley asked if Council wants this as part of a regular agenda or a special meeting and if so, does June 25 need to be made available? Ms. Bensley said after all the decisions are made at this meeting, the position will be advertised. She noted this was altered a little bit from the last version Council saw because Council requested that Ms. Earl be present for this discussion. This all was originally going to be approved on March 12, but because Council wanted Ms. Earl there it had to be done on March 26. That changed the schedule a little bit, and originally the first interviews were going to be the week of June 4. That was shifted that because Mr. Markham is going to be out of town until the week of June 11. It was considered to have June 4 being the first interviews and the week of June 11 being the second interview period, but there was concern raised that a one-week community feedback period was not enough. Therefore, it was extended to two weeks, to have it the week of June 25, so it would not conflict with the referendum, but be on track to be completed before the 4th of July holiday.

Mr. Clifton asked if there was any way the review process could be accelerated.

Ms. Earl said she did accelerate it by a week. To do the due diligence, she needs three weeks. She has to Skype with the candidates and complete background checks.

Ms. Bensley said that due diligence period was cut down to accommodate having her at this meeting with the approval being two weeks later, but still to stay on track for the end of June to complete this.

Ms. Wallace noted Ms. Bensley asked a question about whether Council wanted a special meeting or not, so she did not want that matter to get lost in a shuffle.

Ms. Earl discussed the recruitment process and noted she will be back the week of May 21 at which time she will be presenting the candidates to Council. Then at that meeting, whatever the day is that Council determines, they will advise Ms. Earl who the first interview candidates will be for the week of June 11. After that, Council will narrow it down to their finalists, and that was when the public process would start and when she will need some feedback. There is not a set format. She needs to know the components Council would like to include. There could be a meet and greet with the community. There could be panel interviews as well with the community or the staff.

Ms. Earl said bios will be released about the individuals to get to know the candidates. If desired, there can be a public process and there is more than one way to do it. There can be a formal process where the people are invited, and the candidates are asked specific questions about the community, situations on how they may work with them, and work with Council, and then each candidate comes out, Council asks the questions, and then at the end, the community members who are there can individually go up and speak with people.

She does not recommend questions from the floor, because they want to make sure to impart the same information to everyone. However, at the end, if the candidates stay, then if people have their own individual questions, they can engage all the candidates, if they so choose. That is a very formal community input process. If they do that, afterwards, there can be a comment card, and people can give feedback.

A little bit more of an informal process would be to have a situation where there was a meet and greet that was with the staff and not the community. All the people were in the room, there were several tables set up, and people just spoke to them, and went along and had casual conversations.

Mr. Chapman said he will not be a part of it but he thought previously inviting the candidate to spend the weekend in town and Council spent a few hours interviewing on a Saturday. That was the weekend prior to a Monday night Council meeting, regularly scheduled. The meeting started at 6:00 p.m. and was a forum for the candidates to address formal questions to members of the public, and then allow the candidate to witness a Council meeting.

The feedback from the candidates was positive in that they had time to spend with Council in town. He likes the idea of a meet and greet with staff and suggested it be held on Monday as well. Doing so would not add another special meeting to Council members' and staff agendas.

Ms. Wallace said she is in favor of a formal process for interacting with the public. She thinks an informal meet and greet is great, but that does not necessarily get the most information out to the public who are interested. If there are three candidates, maybe not everybody who is interested in talking to them has an opportunity, but if the candidates are asked questions from Council, the same questions, then respond, the community could develop their own ideas and share those with Council through comment cards. She thinks that would be the fairest, and allow for the most resident participation.

She does think a meet and greet with staff should also be incorporated. This person will be working with Council, but they will also be working with staff. She is not necessarily all that crazy about a stakeholder panel, but she could be open to that. She thought it certainly would need to be open and they could not do that in a closed way, if the rest of Council was interested in that.

Mr. Morehead said he likes the format that was used before of the somewhat formal question and answer of the candidates with the public. He thinks it will be appropriate to have a somewhat more informal meet for the staff. He agrees with Ms. Wallace and believes the stakeholders have a responsibility to come to the public meeting and self-select at that point.

Mr. Clifton asked if Council was talking about the public participation occurring the week of June 25?

Mr. Markham said they have been concentrating on the community input but Council needs to approve the whole process as well.

Mr. Clifton remember having one on one interviews on Friday night, before they went into that process on the weekend. Each Councilperson had a room somewhere, and it was a round robin format, so 25 minutes with him, five minutes to move, 25 minutes with the next person, and so forth, so on. Then Saturday morning, Council as a body interviewed with all the candidates that were there individually in executive session at that point. He said he likes that dual step process.

Mr. Hamilton agrees with Mr. Clifton's idea and the one that Mr. Chapman was describing as well. He thinks it is important to get this right, and he thinks meeting with them individually is a good thing, and then meeting with them as a body as well. Sometimes it brings up some consistency issues.

Ms. Wallace said she is not in favor of the separate, private interviews with individual Council members. She thinks it should be done together as a body as they will be choosing as a body, and they should be interviewing as a body.

Mr. Markham said he believes he heard it would be agreeable by Council to do things similarly to what was done last time, which was the candidates came in for a weekend, there was the Friday night one on one and the round robin which he heard Ms. Wallace does not want and then on Saturday morning, they had an executive session to ask questions as a group.

That way, the candidate got to see the City, spend some time in the City, and then when Council narrowed it down to three there was formal presentation of the questions, and then they can meet them afterwards.

Ms. Earl confirmed the Friday and Saturday is the first round.

Mr. Markham confirmed this.

Ms. Earl said the agreed upon finalists come back for the public process, and then the second meeting with Council.

Mr. Markham confirmed this.

Ms. Bensley noted the first interviews would be held June 8 and 9. June 8 would be the individual meetings and June 9 for the group executive session. She asked if Council was planning to meet June 11 in executive session at the regular meeting to discuss who the final candidates will be. Council concurred.

Mr. Coleman said the only issue he has with the schedule is he has a scheduled vacation the week of June 25, and will be out of town that week. He said he would be happy to speak with the candidates ahead of time during the community feedback period.

Mr. Clifton asked how far in advance will Council get the resumes of the successful applicants.

Ms. Earl said she will be back the week of the 21st of May. Prior to that, Council will have Ms. Earl's report which will contain all candidate materials. She will present the candidates to Council, and Council will determine during the meeting, who they will invite to the first round of interviews. Ms. Earl said Council will receive the report on May 17.

Ms. Bensley asked what Council wants for the second interviews with the public presentation and if it should be at the regular June 25 Council meeting or at a special meeting. After discussion, Council reached consensus to have a special meeting.

Ms. Earl noted when doing the vetting she will put together a few questions and have the candidates give written responses. It is a way for Council to review some material they worked on ahead of time. That is another reason why she needs the three weeks to do so. It will be issues relevant to the City.

The Chair opened the discussion to public comment.

Helga Huntley, District 1, stated it has been illegal since December to ask about the salary history so she would highly recommend that Council take that out. In that same context, the reason it became illegal is because there is some evidence that suggests that it leads to discrimination against women in the salary that is paid to the female candidates if they are hired. Regardless of whether that law has gone into effect, she recommends removing the salary history request. In the same vein, UD has gone through a lot of effort over the last few years to address unconscious biases, especially hiring in the sciences and engineering, and a lot of the staff have gone through training to address unconscious biases in hiring decisions, and she would just like to put that out there for anyone to consider doing something like that. If Council is interested in that they could certainly talk to UD. They have a lot of people who are now trained in that and have experience in providing that kind of training.

Howard Smith, District 6, agreed with Ms. Wallace that if there are seven separate different interviews there will be seven different versions of the story. He thinks that can add to an awful lot of confusion rather than having all Council listen to the candidates or they can crosstalk about them hearing the same thing.

Ms. Olsen, University of Delaware, said she would provide information about training to Council.

Chris Locke, District 1, said the comment about more than 50% of the City is college/university residents: there are about 22,000 students at the UD, of which 7,500 live in the dorms, so that brings it down to about 14,500. There are about 1,000 ELI students, bringing it down to 13,500. Then they have about 3,000 that commute from all over the area, that brings it down to about 10,000. He noted that the population of Newark is 33,000, so only about 30% of the student population would be considered city residents. Ms. Bensley said in the census counts, the students in the dorms are counted as city residents.

Mr. Morehead said he was interested in the unconscious bias training for Council before this process is done.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO APPROVE THE PROFILE AND THE ADVERTISING TIMELINE BASED ON THE AMENDMENTS THAT HAVE REQUESTED BY COUNCIL.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.

Nay – 0.

Absent – Sierer.

**17. 6-B. COUNCIL’S VOLUNTARY PARTICIPATION IN 457(b) DEFERRED COMPENSATION PLAN – DEPUTY CITY MANAGER**

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**1:46:52**

Mr. Haines said the item was regarding a potential option for members of Council. The IRS allows for elected officials as an eligible class of participants, if Council chose to amend the existing plan for a 457(b)-deferred compensation to add active elected members of Council as another eligible class. It could be a voluntary contribution, with no City match and no additional administrative fees. The City has an existing plan today. Staff believed a resolution would provide the formal direction that makes it permissible. Staff would be able to put the criteria that would provide a statutory cap so the monetary amount that can be put in is \$18,500, depending on age, if there is a catch-up period. Once they are no longer an active member, they will be ineligible to contribute.

Mr. Markham said it is purely voluntary, but would allow a Council member to put away money tax-free for retirement at no cost to the City, no administration time, and it provides options. Mr. Haines noted it is not totally tax-free as state and federal tax still apply and wanted everyone to be aware of that.

Ms. Wallace said with other 457 plans, that there is no penalty for taking some of the money out of retirement, like there is for a standard 401(k). There is no penalty. Mr. Haines confirmed this. Ms. Wallace said she agreed as long as there is no additional cost to the City, particularly if this would aid in attracting additional City Council candidates.

Mr. Clifton asked about the separate class for Council members and asked if it was required from the firm that the City uses that Council members be an employee. He noted in the past that there had been a question about whether Council members are employees, which grew from the issue of executive sessions regarding Council members. He thought that determined that Council members were not employees and did not want this to be an entanglement where the company considers Council members employees when he did not think they were. Mr. Haines said from an IRS and a compensation standpoint, Council is on a bi-weekly pay, with deductions with a W-2. It is permissible for the IRS to consider Council members while actively elected to contribute to this voluntary plan. From an IRS standpoint this is possible and there is no conflict from an IRS payroll standpoint. Ms. Bensley said the definition of an employee under FOIA versus the definition of an employee under Federal tax law were likely not identical. She noted there are many elected bodies in Delaware that do have retirement plan participation, such as the State Legislature and New Castle County Council, so it is not unprecedented for elected officials to have some sort of retirement allocation as part of their compensation package.

There was no public comment.

Mr. Markham said there was consensus to come back to Council with a resolution. The City Solicitor said there is no legal issues.

**18. 11. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

**A. Council Members:**

1. Discussion and Potential Director to Staff Regarding Meeting Locations for City of Newark Boards and Commissions – Councilwoman Wallace

**1:53:03**

Ms. Wallace said she had multiple residents reach out to her about not being able to participate in meetings for various boards and commissions in the City. Mr. Bilodeau had shared an opinion which Council previously opened up to the public. She wanted to see if there was enough interest from Council to have all board and commissions meetings meet in City Hall and add that to the Code, with the caveat that each board and commission can request to have their meeting off site, but it must be approved by Council. That way Council can have some oversight over where these meetings are being held. She thinks there are some off-site places that could be acceptable, but her concern specifically is she has had residents that cannot hear, or do not know where the meetings are being held in restaurants. Based on Mr. Bilodeau's opinion, that could get the City into some legal trouble and be considered a FOIA violation. She thinks they have a responsibility to do something about that before there is a FOIA challenge that could get the City in trouble.

Mr. Clifton said he thoroughly agrees with this. He is not certain there is not a good reason not to hold meetings in Council chambers. If it changes, then Council should be part of the discussion. His opinion is, when they are held off-site in restaurants and other places, that by design cuts down on public participation and the ability to hear, to properly record the meeting, and to have oversight of the meeting. He knows there are some meetings that are probably more convenient during the day versus the evening, and he understands that, but it does not eliminate to him the purpose of having the meetings in a room that most reasonable people of the public would expect the meeting to be, at least in this building if not in this room. He asked if this must be done by resolution, or just by direction of this body. Mr. Bilodeau would recommend that they have it in Code.

Ms. Bensley said she would like some clarification because restricting meetings to only the Council chamber was going to be problematic. She would encourage Council to at least allow City meetings to be held at City facilities. That would include the Council Chamber, the George Wilson Center, other conference rooms that are available in this building. If things are restricted everything to just the Council Chamber, there is going to be a long wait time for people to get in.

Mr. Clifton said he would agree within the confines of a public building. He thinks that is reasonable. He understands at night that there could be some conflict, because they have so many boards and commissions that have meetings in the month. But a lot of the people meet during the day, they want to meet during the day, and he thinks there could be credible reasons why they do. Quite frankly, there are nine hours that there are people in City Hall here. Somewhere during these nine hours he thinks they can squeeze people in.

Mr. Hamilton said he has attended several off-site meetings and it is difficult to hear when they are in a restaurant and people are sitting four people at this table, two people sitting here and the public over here. It does not make it convenient for the public. Some of these are held on Main Street in restaurants, and that requires residents to either walk, bike, or pay parking, and he thought that was unfair. He agrees to have them on City grounds, whether in the George Wilson Center or here. He preferred City Hall, because the Wilson Center is not the most open, welcome door set that they have.

Mr. Morehead said his experience with the Traffic Committee meeting behind locked doors, where they must come into the building and go up an elevator is not user-friendly. He knows there is a requirement to unlock the doors into the lobby in City Hall before starting a meeting and he does not understand why that difference would be continued. He would propose that all of the public meetings happen in Council chamber since it is basically the only room that is not locked of all the various conference rooms and so forth. Possibly the conference room in the City Secretary's office might be available as well. But he firmly believes public meetings should happen in the public domain, and that would be in this building. He would not extend it to the George Wilson Center. Some of the other folks using this building can go there, would be his perspective. He thinks it is more important that the public work be done in public.

Mr. Markham said he is the odd man out because he would like to see Council move around the City, and have their meetings not just in District 4. There are other places that would make it easier for residents to have meetings. The firehouse has meetings as well at the church out on Paper Mill Road. He

understands the sentiment and understands the biggest offender; but they are changing and may not be a public body in approximately a year. There needs to be a sound system and easy access and it needs to be well-publicized. But he also thinks it needs to be established and cannot move around. He is concerned about trying to pack everything in Council Chamber and that may be somewhat restricting the ability to move certain commissions and boards.

Mr. Clifton said Mr. Markham is not necessarily the odd man out because he believes Ms. Wallace did say they would approve other places, just like they did for the Florida T meeting at the firehouse and the refuse meeting at the church. However, he noted there is a cost in doing that as there were 1,600 cards were sent out to residents to let them know they were meeting at the firehouse. He does understand that this type of process must be undertaken from time to time and understands there may be critical issues that necessitate a larger venue.

Mr. Markham asked if Council can approve more than a one site meeting by saying a board wants to meet in a consistent place all the time and Council could approve such a request, and not have to return every other month. Ms. Wallace said that was exactly what she was envisioning. She believes the City has legal responsibility to comply with FOIA. However, the City also wants to make sure the boards and commissions can meet. She would not want there to be a waiting list for meetings. She thinks ultimately Council has the responsibility to make sure that the meeting is compliant with FOIA. She believes eventually it must be in Code and cannot just be the direction Council changes and it must be voted on as a body and it needs to be clear. She believes Council has not given enough direction to the boards and commissions.

Mr. Chapman believes there is enough direction to bring this forward at a future meeting as an agenda item.

The Chair opened the discussion to public comment.

Helga Huntley, District 1, said she recommends not moving the City Council meeting around. There have been workshops in other locations and it happened that one workshop was scheduled at the senior center, the next one was scheduled in a different location and she went to the wrong location.

She noted the Traffic Committee is held behind closed doors and people attending must sign in. She believes the last week's Traffic Committee meeting was not actually ever advertised and she is not certain whether the Traffic Committee is considered a public body. She suggests advertising consistently locations and other details.

Joe Charma, District 1, believes Council is dancing around the issue. The issue pertained primarily to the Downtown Newark Partnership. He said he has been chairman of the Partnership, chairman of the Board, and 20-year chair of the Design Committee, he has never had anyone in the 20 years tell him they did not know the location of the meeting or what was going on with the committee. He believes most importantly and he believes Mr. Clifton understands that Chapter 2, Article IV, Section 2-46, Subsection C of the City Code, states that the Partnership may establish rules or procedures for conduct with its business. He thinks it is clear and noted in City Code, so anything that Council does is going to require a formal ordinance process with first reading, second reading and public hearing. He asked Council to keep that in mind.

Chris Locke, District 1 and Chairman of the Merchant Committee, wanted to address the reason of what is a good reason to meet outside of Council Chamber. He said the committee members are merchants on Main Street and have businesses that have to open at 10:00 AM in the morning. It is convenient to have the meeting on Main Street so everyone can get to their shops and work in a timely fashion. This is a volunteer subcommittee of the Downtown Newark Partnership. To get people active and to participate on a volunteer basis, the intent is to make it as convenient as possible. He has been a part of the DNP for over 25 years and was a member when it was called the Newark Business Association and he as well has never not had anyone not be able to meet or find out where the meetings are held. He noted there are two opinions from City Solicitor stating it is not a FOIA violation. He believes that citizenship would mandate some active participation. He noted they will be posting a sign so it is very visible for everybody to see where the meeting is. He said two citizens have attended their meetings and they have only had four or five meetings.

Howard Smith, District 1, member of the Design Committee for over 12 years. He concurred with both Messrs. Charma and Locke. He believes the committee meetings are very easy to find because they



meet on the same day of the month, at the same time of the day, and the location is always on the agenda posted on the City's website which is where all the City agendas are.

Ms. Bensley clarified the consensus is to bring forward an ordinance to restrict boards and commissions to meeting only in Council Chambers unless otherwise approved by Council. This can be expanded to include any City facilities if Council chooses. Ms. Wallace said she would be okay with expanding to other City facilities, but is not sure where her fellow Council members stand. She thinks the George Wilson Center would be fine. Mr. Chapman noted typically a member of Council wants to get their item on the agenda or has a specific idea about potential legislation that Council person will work directly with staff to create the correct wording or be actively engaged in doing so. This current process is to figure out if this is what the Council wants to see on the agenda. He believes there is a consensus to do so. He believes it would be highly irregular if they spent the next thirty minutes hashing out the details since there will be no vote at the current meeting. Ms. Wallace said she will work with the staff.

19. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS:** None

20. 8. **FINANCIAL STATEMENT:** None

21. 9. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

A. **Bill 18-03** – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 275 South Main Street

**2:13:00**

Mr. Markham explained the following items, 9A, 9B and 10A and 10B will be discussed together with separate votes for 9A 9B, and 10B where each Council member will have to explain their reasons for their vote.

Ms. Bensley read the items into the record.

Ms. Gray said the proposed development has four components to it. It is a Comprehensive Plan amendment. The applicant is requesting the rezoning of 1.09 acres on the north part of the parcel from BC, which is general business, to BB, which is Central Business District, to replace the existing 2,150 sq. ft. vacant building with a mixed-use building with approximately 10,600 sq. ft. of retail space in the first floor and 12 apartment units on the second and third floor. A Special Use Permit is requested for the apartments.

The proposal includes demolishing the 6,400-sq. ft. of the existing shopping center along 275 South Main Street to provide additional parking. The Comprehensive Development Plan amendment and a 27-space parking waiver is also requested to accommodate the proposal.

The Planning Commission recommended approval of the rezoning, major subdivision, special use permit and Comprehensive Plan amendment with the series of subdivision advisory committee conditions that are included in staff's report. At the Planning Commission meeting held on February 6, 2018 the Planning Commission also recommended approval of the 27-space parking waiver.

Michael Hoffman, on behalf of the applicant and property owner entity RGW One, LLC. Also present is Robert Wittig and Tripp Way, principals of the owner entity and Chris Duke of Becker Morgan Group, which is the project engineer firm. He reiterated what they are seeking already listed by Ms. Gray. He added the 27-space parking waiver was approved by the Planning Commission on February 6, 2018. He said his PowerPoint presentation has many similarities between the one he gave at the Planning Commission meeting but for the benefit of Council and a full record he would like to present it.

The property is 4.95 acres. It was made up of about 58,000 sq. ft. of retail space and included the Good Uncle building on Murray Road. The property is currently zoned BC and the property owners are here seeking a rezoning for slightly over an acre of the property to BB. Mr. Hoffman said the BB zoning is consistent with the Comprehensive ("Comp") Plan and Council's direction towards mixed use development along South Main Street in this corridor.

Mr. Hoffman provided some historical slides showing the land development of the parcel and the vicinity starting from 1937 to present day. By 1954, the area become slightly more developed with the Park 'N' Shop parcel being developed in 1961. The homes that are surrounding the property are still not there during that time and he believes it was worth noting that the commercial establishment predated the addition of residential structures that were built in around it. In 1997 there still was not the shift over to the mixed-use structures that were part of the movement. Even in 2007, it is still a suburban corridor

along South Main Street. In 2013, there is more of a mixed new urbanist type development pattern that had developed and emerged along South Main Street.

He said the City invests a lot of money to promote walkability and bikeability and infrastructure improvements that promotes that walkability. When the current property owners bought the property in 2014, they started to consider the future of the property. A July 2014 Newark Post article detailed the current owners' plans to renovate the center as they believed the value of such an investment can be a tremendous asset for South Main Street and the City of Newark. By January 2015 there were facade improvements and he stated the owners had studied what would be good for them, the community and the tenants. Façade improvements were done with a focus on the side of the center facing Apple Road. He reported first floor retail is being considered with residential uses on the upper floor which is a new urbanist mixed use design that has become prevalent in modern times. He said prior to World War II most metropolitan action happened in cities reserved as retail, cultural, and work place hubs. The suburbs were boom towns in the second half. When the Park 'N Shop was developed that was in the post-World World II style of zoning and development patterns.

The recession then followed where after a fifty-year expansion of suburban development, it also accelerated the trend for retrofit, re-inhabit and re-green the rising numbers of dead malls, dying office parks, and other declining suburban properties. That is when the shift to mixed use new urbanist developments occurred. He noted one of the benefits of mixed use is that it routinely achieves projections of 25% to 35% internal capture rates, substantially higher performance to measure recent studies. Internal capture means traffic. If they want to promote walkability and bikeability, mixed use is the way to go because they can reduce the vehicle trips. This is documented by the Urban Land Institute which is the preeminent authority when it comes to mixed use and the research behind it.

There are many benefits of mixed use and they are included in the PowerPoint to Council and are entered into the record. He noted successful projects require market potential and require balance. He said this concept is not new to the City of Newark because a lot of these benefits of mixed use and new urbanist principles are exactly what Council and the City adopted and incorporated within its Comprehensive Development Plan. When talking about land development core principles and the City talks about appropriate infill and redevelopment and the most efficient and sustainable uses of land, it talks about development that complements the existing transportation network through street connectivity, transit accessibility, pedestrian and bicycle amenities. He said these items have been incorporated into the development plan.

The Comp Plan addresses weaknesses when it calls out half filled, unattractive shopping centers. He believes this proposed plan addresses this along with threats such as student rentals in single family neighborhoods. He believes this proposed plan addresses this by providing an option that would bring the rental outside of the neighborhoods. It mentions big box stores; poor architecture and they believe their proposal addresses that.

He added the Comp Plan talks about compact and mixed-use development for a pedestrian friendly environment and they believe this proposed plan addresses this.

The Park 'N Shop property is in planning section A and it specifically calls out, unequivocally, mixed urban recommended for downtown along East Main Street, South Main Street West to West Park Place, and Delaware Avenue. This project is along that corridor. Some recent projects that have incorporated mixed use with the first-floor retail and the upper floor residential. They are Rittenhouse Station and 136 South Main Street. He said the proposed density on the proposed plan is about 10.9 units per acre. Rittenhouse Station is 14.8 units per acre. 136 South Main Street is 18.9 units per acre. Madeline Crossing is 16.8 units per acre. These are similar developments approved and built in a higher density than this proposed project.

The proposal adds green elements such as trees, landscaping and crosswalks as well as reducing impervious surface. There are facade improvements and improved architecture. Additionally, bike racks were incorporated into the plan at the request of residents along with public space where the community can sit and take advantage of this being a community amenity and sense of place. The hope is to take these grayfields and turn them into a successful development. The first iteration of the plan did incorporate a drive through element. The City was approached along with Mr. Hamilton and Ms. Wallace and two public meetings were held to vet this concept throughout the process. In the first public meeting it became apparent that the community had many concerns relative to the drive through, such as stacking, noise with the squawk box, and environmental questions with stalling vehicles. As a result, the plan was revised and the drive through was eliminated. In subsequent community meetings it also became apparent that even though they had no plans to put residential units above the existing retail, some of

the community asked if that was not planned why is it necessary to rezone that portion. It was agreed to rezone only the portion where the residential units will be added.

He said they worked with the City to not only meet the requirements with storm water but also go beyond what is required. Recognizing the City's interests in mitigating storm water management impacts, they incorporated storm water management on site in addition to reduce the impervious surface. He said they appreciated the feedback they received from the community and he thinks it made the plan better. Notwithstanding all of that, he respects and understand that despite the public outreach and the efforts to address concerns, there are a handful of people that have raised concerns as they go through the process and he wanted Council and the record to be aware of them in the full context and their thought process in evaluating them.

One of the concerns from a couple of people was that this project represents large scale development and that is inappropriate and inconsistent with the character. He wanted to emphasize the Comp Plan specifically calls for this type of development on this corridor. In addition, this commercial character has been there and predates the neighboring community. Notwithstanding all of that, he said they are not proposing to expand the parcel and when it comes down to the retail component, there is currently 58,000 square feet approximately of retail space and they are proposing approximately 60,000 square feet of retail space when they incorporate demolition of the bank building.

He believes the increase is negligible in terms of the retail space. In addition, the building is a structure they could build under current zoning. It is a building of the size, the scale, the height, where it is located on the site, that is all consistent with the current zoning. The only purpose for the rezoning is to allow the residential over the retail. In addition, in terms of the residential, they are proposing 12 residential units above the retail because it is 1.09 of an acre on the area being rezoned and it amounts to 10.6 units per acre for this property. There are other mixed-use developments in the City. To claim this is a large and out of character addition is just simply not in line with the objective facts. In addition, some residents raised the concern the proposed project would increase traffic on the property. The developers believe the apartments will generate pursuant in accordance with the ITT trip generation model. The 12 apartments will only increase the average daily trips by 50 trips a day, which is a negligible increase.

There was the suggestion to do office space rather than residential. If office space was introduced and the concern is traffic, the office uses of the same square footage would increase traffic to 136 average trips per day, as opposed to the 50 that is attributed to the residential.

All told, this property will increase traffic of 190 ADT (Average Daily Trips), which in trip generation, is a drop in the bucket. When Acme left, which had occupied the same space at the existing Rite Aid, that represented a decrease of 263 ADTs. So, the difference from when this center had the Acme versus the difference of adding this property, adding this property is less of a net increase. All of the infrastructure is there, it supports the development and supports the use as proposed.

Another concern that was raised was that student housing would change the character by inserting that element and he believes it is not consistent with the objective facts. This is South Main Street and there are a lot of properties predominantly rented to student users. They are proposing 12 units in an area that is along South Main Street and this area was designated in the Comp Plan to have this type of development specifically to address the threat by removing students from the residential community to the primary corridors. He believes the important thing to keep in mind is they are not proposing balconies or yards, and there will be security on the premises. This is a property owner who is committed to monitoring, would have to have the retail users have a center that embraces and attracts customers. The developer has also agreed to a deed restriction that prohibits renters from obtaining parking passes on residential streets and per this plan, there are 34 spaces required for student users and they will have 34 stickers for student users. All the student parking that is code required will be available on site for this property.

He wanted Council to understand they cannot legally restrict the apartments to student users or from student users. If every single unit were rented by non-students, that is okay with the developer but for the purposes of the analysis and the questions they want these points to be covered.

The other concern that a handful of people have raised, really comes back to this idea of opening Pandora's Box. He believes it is important to keep in mind as far as this property and this proposal is concerned, the BB zoning district is more restrictive than the BC zoning district. In other words, the uses that are available by right under the BC zoning district include auction, automobile sales, crafting service, ice manufacture, warehousing. None of those uses are available under the BB zoning district. All the uses that are available in the BB zoning district however, are already available in the BC zoning district. So, by

pursuing this rezoning, the property owner is not opening the door to other uses beyond what is being proposed. However, what it is allowing the property owner to do is the pursuit of the apartments above the retail, as a special use permit, specifically what is called for in this plan. It bears emphasizing that under Delaware law, the Comp Plan has the force in effective law. Unlike counties which only look to the zoning map; in municipalities they must take the Comp Plan and once it is certified and adopted it has the force in effective law. Once this happens, Council is charged with rezoning and acting to implement the recommendations of the Comp Plan.

This proposal takes the recommendations from the Comp Plan and presents a plan that enables Council to enact those recommendations, in accordance with state law or consistent with state law. To not follow the recommendations of the Comp Plan would indeed be highly irregular.

He noted there are residents that are vocal and adamant supporters of the proposal and their testimony and points are in the record as well. He asked that when considering the application as presented objectively and not based on anecdotal, unsupported feelings or fears, it becomes clear that this really does meet all of the code requirements and all of the requirements to be approved. The zoning is a lockstep in conformance with the Comprehensive Plan and the development of the area. The impact of the adjacent neighborhood will be a development that will improve an existing, outdated and underutilized shopping center. It is an opportunity to allow a walkable, bike friendly development. It is in line, in terms of scale and size, with the surrounding uses and what is permitted by the zoning and it certainly would not adversely impact neighboring properties.

He reported on the Planning and Development report on January 30, 2018 the department concluded, "There is no indication that 12 apartments at this location will adversely affect anyone's health or safety and will not be detrimental for public welfare or injurious to property or improvements. This will provide 44 bedrooms, in a central location, on local, regional bus routes and within walking distance of campus and most necessary amenities."

He thinks it is telling that the Planning Commission acknowledged the applicant did an excellent job of pulling out the pertinent parts the comprehensive plan as adopted and showing how the project needs virtually all those tenants.

He wanted to add there is a difference on the developer's agreement on paragraph 16. He said he has since spoken with Dave Culver, the Code Enforcement Manager and they have agreed to this language that is before Council. The code requires the existing building to be sprinklered when more than 50% of the interior GFA, Gross Floor Area, is renovated. They are not there yet and the developer agrees when they get to that point they will have to put the sprinkler in and the City agrees with this.

The Chair opened the discussion to questions from Council.

Ms. Wallace asked if the apartments will be leased per apartment or per bedroom and will the partnership be managing the apartments or will they be hiring an outside firm to do so. After consideration Mr. Hoffman said that matter had not been determined yet. Robert Wittig, Diamond State Management, stated the partnership would be managing the property.

Mr. Morehead asked Ms. Gray if this project meets the Comp Plan. They are being told it does, but when reading the plan, it does not. Ms. Gray said the proposed requested amendment is to amend the whole lot as it is described in the Comp Plan as commercial. She stated there is a designation in the Comp Plan for mixed urban, which though proposed a little over one acre is proposed to be. So, that would necessitate the map being amended to match mixed urban. Mr. Morehead suggested at the current point in time, the plan does not meet the Comp Plan. Ms. Gray said she would not put words in Mr. Hoffman's mouth but in the language in the Comp Plan does what Mr. Hoffman was articulating regarding the mixed use. Ms. Gray said the recommended uses in the section A, which is what this area is, described in the comprehensive plan does talk about residential, low and high density, mixed urban, commercial, active and passive recreation and stream and valley.

Mr. Hoffman said the City Solicitor can confirm this as well. Mr. Hoffman referenced the *Farmers for Fairness v. Kent County Levy Court* case from 2012. It calls out specifically a similar situation in how municipal Comp Plans differ from county Comp Plans. It specifically says that, "The Delaware courts have viewed section 4952 as meaning that just the maps or map series of a County's Comp Plan have the force of law, rather than the maps or map series and the text of the Comprehensive Plan. The court in *O'Neil* addressed municipal comprehensive plans. While statutes dealing with municipal comprehensive plans are like those for counties, *O'Neil* noted: "Interestingly, the Delaware Code provides only that the land

use map or map series' have the force of law with respect to county plans, while a municipality's entire comprehensive plan carries the force of law." This difference means that when interpreting a municipality's comprehensive plan, the court looks to the text of the plan, in addition to the maps, to discover what the comprehensive plan envisioned for the property. When dealing with a comprehensive plan, they do not just look at what the map says, as they do in the counties. When they have a municipal Comp Plan, they must look what the text says, compare that too in addition to the map, then determine, what is the import and the recommendation of the Comp Plan. This development is lockstep consistent with the text of the Comp Plan and they are seeking a Comp Plan amendment, so that the future land use map matches that language.

Mr. Morehead said that is news and asked the City Solicitor if he would agree with that summary. Mr. Bilodeau said he would agree that the comprehensive plan is where they start and they look at the comprehensive plan as a living document and it is not something that is just set in stone. The whole plan needs to be considered. Unless it says they cannot do something absolutely then there is some room for interpretation.

Mr. Clifton asked the sources for the historical picture from 1961 and 1968. Mr. Hoffman said they were from New Castle County parcel view map and their GIS system. They show the parcel boundaries which is useful including and typically the outline of the buildings. Mr. Clifton noted when looking at the historical pictures, the picture from 1968 shows the building pretty much as it appears today. He believes it may not be an accurate characterization to say it was a shopping center because he does not believe one would have been built in that location if there were no neighborhoods nearby to sustain it and made no sense to him.

Mr. Hoffman said he has cross checked on parcel view and the individual parcels and buildings. They do know the existing building was built around 1961 and they know that the bank building was built around 1969 and those are from the property records and so they do in fact know that those buildings emerged during that time. He further stated from a general concept this is not unheard of and is exactly from a planning standpoint, what was in place post World War II as an emergence of suburbia. This project would be in line with that.

Mr. Clifton said he has been a strong proponent of new urbanism and he has toured many areas that support this concept. He believes one of the concepts of new urbanism is an absolute diversity of businesses and as it was said in the planning report, to be walkable to core services that people need, which seems to him would be maybe like a grocery store. There is no grocery store that he would say is walkable. It seems to him that new urbanism requires year round people to be there which this does not seem like it is going to provide. He does not believe that qualifying this as new urbanism is necessarily an accurate characterization.

Mr. Hoffman said he respectfully disagrees. He appreciated the points Mr. Clifton made however, the fact of the matter is this property and this development does incorporate walkability. It does promote pedestrian activity. He added that recently a lot of the feedback they received was in favor of community amenities and the property owners have been in negotiations with a craft store tenant. This was one of the types of uses the community was in favor of, and they are excited about the proposed development. Not every mixed-use community has to have a grocery store to have the benefits. They can have the benefits of new urbanism on an incremental scale, with precisely this development.

Mr. Clifton said he was quoting what the Planning Department made that statement that within walking distances of campus and most necessary amenities. Mr. Chapman said the level of vacancies in the apartments and the buildings near Suburban Plaza and the surrounding plaza and in Newark Shopping Center he believes will strongly counter that argument.

Mr. Clifton said he was a little concerned about how the sprinkler system is being approached. He understands City Code says that up to 50% renewal are exempted from that, but he does not understand why this is even a discussion that they would not consider adding a sprinkler system to an entire building in today's world.

Mr. Hamilton thanked Mr. Hoffman for his presentation and for hosting the meetings to get public input. He noted that Mr. Hoffman did not point out that Main Street is too student oriented and then it was followed up with they cannot discriminate against students. And while that is true, UD offers a lifetime learning thing for older folks. He said the developer could have chosen to zone this for 55 and older. The Comp Plan is severely lacking for moderate to low income housing. There is a severe shortage of senior housing. When discussing building a community and putting together a comprehensive plan (and he noted these are recommendations), there are things developers can choose to do. He said if a community was

being built, it should be based upon a holistic view of the comprehensive plan. There would be some diversity in the housing that is being applied here and built here in Newark.

He said he appreciated a lot of things that have been done surrounding this project. He said foot traffic impacting the neighborhood has not been discussed. He recalled Mr. Hoffman or Mr. Wittig saying if the neighborhood had supported the shopping center more, then the businesses would not be going out of business. He said he is not sure how there is a plan to add retail if the people are not going to be walking to the retail and how to get increased business without attracting cars. He believes Main Street struggles many months out of the year because all the students leave. There are empty store fronts on Main Street, and it is not necessarily just that the neighborhood does not support it.

He said when he hears of stores going out of business it is not for lack of people coming into the stores, but he has often heard tenants say that they were forced out because of the rising rents. He said they must build a better town and a smarter town, so he is hoping that they continue to think differently. While there were different interpretations of how to play out the comprehensive plan and follow recommendations, it is not written in stone that they must rezone something. He believes there are more than a handful of people that are not interested in the project.

Mr. Hoffman said he was basing his points off the record and is open to hearing concerns and will do his best to address those concerns. The proposal to the rezoning to the BB zoning district is to have residential above retail and the developer is not talking about specific type of residential, in fact it is inappropriate for them to do so. If 55 plus residential is appropriate then it is inappropriate to make the argument that student housing is inappropriate. In other words, if the residential aspect and mixed-use concept is appropriate, which again, the Comp Plan as the developer submits clearly shows that, then the rezoning is indeed appropriate. The one point on Main Street; Forbes magazine ran an article last year where Forbes said that 17% of restaurants will close within first year as an industry average. That is higher with smaller restaurants.

In 2015, Newark Shopping Center was one of those half-filled unattractive shopping centers until it was renovated with façade improvements. Following the improvements, occupancy increased to 70%. In addition, the same article that talked about 70% occupancy of the Newark Shopping Center, also mentioned Main Street is at a virtual zero percent vacancy. The point is this is exactly what they are seeing anecdotally, with their tenants and the tenant interest of the community type amenities with this development plan is exactly what they have seen proven statistically, as these old outdated suburban centers have been renovated and rejuvenated. He agreed that Main Street is too student oriented but the focus on this property is to try to attract those community type amenities, like the craft store. Hopefully that proved that the retail options and through working with the community in that way, they can get a development that has the benefits of a true community that is not too student oriented.

However, as far as the others it is difficult to say when there is the Comp Plan that specifically says mixed urban recommended for downtown, southwest and West Park Place. That is a specific recommendation.

Mr. Hamilton pointed out that Mr. Hoffman raised the issue of student housing not him.

The Chair opened the discussion to public comment.

Carmen Marra, District 4, said the Park 'N' Shop is her front yard view. She believes the purple dilapidated bank is nothing but an eye sore. She believes the proposed project will make it look very nice. The current landscaping does not look too hot. The proposed green spaces look great. Realistically, adding twelve apartments will not make a huge deal with traffic as there are many apartments across the street and everywhere they look. It will promote people walking and biking especially with the proposed bike path. She noted there are not many people that walk up her street. She bought the house when she went to college. Students can walk to school and believes any students residing in the proposed project may do so as well. She believes the grocery store is not a huge issue because there will be college students using the store. She said Rite Aid has quite a selection of food as well. She believes the project should happen and she is in complete agreement.

Rosie Zappa, District 4, said she has been a resident since the shopping center was four years old. She said before this redevelopment of this property, it was a dump and had been for many years. She knew people thought it may be an overexaggeration to say, but prostitutes, drug dealers, rats, all were her neighbors before now. These guys came in and she does not know them from anybody. But, they have done what they said they were going to do and they have done it consistently. They have cleaned up the

place and it is gorgeous. There is never a piece of trash outside. She is someone that has lived there a long time and was thinking about selling the property because of the decline in what was going on there, but now she cannot ask for better neighbors. She agreed it is a changing world but that dump up on the corner versus what the potential is, is going very lovely. If they take half as great of care of all of that as they have the back end of the shopping center that nobody sees, she believes everyone will benefit from it. She believes there will be fewer and fewer college students and more actual residents who live here who are now in their 60s, 70s, 80s. They will be looking for places to shop. The shopping center used to be the greatest place to shop when she was a child. They could get a hamster and they could get a ham sandwich. She noted the current owners of the Chinese restaurant in the shopping center are her residential neighbors. The DP Dough restaurant is there now and the center is starting to a community situation. The guys at the exercise place are great, the barber shop; they know them as well. She is 100% for the project and she again thanked the developers.

Amy Smith, District 4, said the idea that this is anything but student housing when there are ten four-bedroom apartments proposed and she believes this means the access being discussed is not up South Main to Main Street, but down Winslow Road, down Sunset Road to the library and to the campus. She said not discussing foot traffic is ignoring a very significant element. She said she does not think anybody is unhappy about the purple barn going away, but the housing must be looked at carefully. She said it is wonderful that this developer is only proposing twelve but there is no guarantee that this one acre being rezoned does not end up being like the other examples they showed, which is higher density.

Carol McKelvey, District 4, said she had been coming to Council meetings when there was a proposed Wawa with gas pumps on this property. She believes this is a beautiful suggestion of what could happen to this property. She is really impressed with the idea that they have stipulated how the parking would be handled and not allow the students to get residential parking permits so they could line up her road full of their cars. She would like to emphasize that they need to acknowledge how these people have chosen to work with the residents. They really were willing to listen and willing to modify and willing to create ideas together and she thinks this is a very valuable precedent that has been set.

Jim Dunson, District 4, said he has lived at this residence for 50 years. He wanted to address Mr. Clifton's comment. He stated there was a grocery store, a hardware store and a Five and Dime, but it was like a small department store. This was considered the outskirts of town in those days. The purple barn was a Friendly's restaurant. He would like to compliment the development as well. The developers have listened to the concerns of the neighbors. His main concern is the access from South Main Street because there is hardly any way to get in to the parking lot now from South Main Street. There will be an increase in traffic on Apple Road and that intersection and that is his only concern.

Kevin Sacca, District 6, said he was born and raised in Newark and attended UD. During his last year at UD, he did live in off campus housing. He wanted to address Mr. Clifton's concerns regarding the type of resident that would be living in the proposed building. He believes in most cases they would be year round residents. In his experience he believes that entire apartment buildings do not empty out even during the summer and the winter sessions when the UD closes. Because UD closes there are students looking for more of the town's amenities to use and engaging a little bit with the community, which he thinks is positive and can help bridge that divide between the community and the student body. He noted Mr. Hamilton brought up the idea that this could be possibly zoned for over 55 communities and he does agree more are needed because there are not a lot of them in Newark. However, he is concerned with placing an over 55 community exclusively on the second floor of the building. He believes it may present a bit of a hassle for some residents to get to their apartments, especially, if they are older and maybe less able than younger residents. Overall, he is in favor of the project. He believes it would bring a lot of great business to the area and an addition to the community.

Joe Charma, District 1, said this project is replacing a building that is slowly being demolished by neglect and offered kudos to the developers. This proposal is in the downtown district on South Main Street and while it did not come before the Design Committee for review or recommendation, the Committee would support this as the project is exactly the kind of neo traditional new urbanism that the design guidelines put forth. This will increase property tax revenue to the City, along with business license fees to the City and finally the sale of the utilities to the City. He believes it is a win-win. He believes that student residents are going to leave their cars on site and ride the campus bus that circulates the area and they will walk. He believes it is long overdue for this site.

Chris Locke, District 1, owner of Main Street business Formal Affairs, General Counsel for Lang Development and Chairman of the Merchant Committee, wanted to respond to Mr. Hamilton's comment that Main Street struggles. He noted there are only four vacancies on East Main Street. One is a basement unit near Arena's. There are two at 92 E. Main Street and the bar that is above Grottos. Commercial

tenants line up for spaces in buildings that they have on Main Street and tenants are calling before they even know that the other tenant is thinking about turning in their lease. That is how desirable Main Street is. There was one tenant that bought a business to close his and move on to Main Street. It is not a seven-month business but rather a full year-round business and he would be more than happy to meet with Mr. Hamilton and introduce him to commercial tenants and they can tell him what is going on.

Jean White, District 1, said in her mind the developer does get credit for not having a drive through and she believes many will appreciate that. She believes the whole development should be balanced as one part is one story and she believes the other side should be no more than two stories to remain balanced. She opposed the apartments above and thought it should be one story or two stories with offices above. She does not think this is the place to put student apartments especially with the proposed density with 34 parking places. She also noted the students will have visitors and may come after the shopping center has closed and may visit other times and not actually be shopping there. She said she misses the Scott True Value Hardware store. She believes this is a bad precedent. She is for mixed use on Main Street. She believes the stores with apartments above on Main Street are a different situation. She would also oppose putting shops above the Newark Shopping Center. She would be in favor of taking down the old Wilmington Trust building and put a coffee shop or whatever else and not change the zoning.

There being no further public comment, the Chair returned the discussion to the table.

Ms. Wallace thanked the developers and Mr. Hoffman again. She would like to see this process continued in the City and would like to encourage other developers to be so open. She is very appreciative of the community meetings. However, she has had only two residents of her constituents, who have said they are in favor of this development. She has had many more who are not in favor of this development. She wanted to respond to comments made by Mr. Hoffman during the discussion. Mr. Hoffman mentioned "half-filled" shopping centers. She noted this project is not really addressing the shopping center as it will remain with an addition of a mixed-use building. She believes it may be an odd fit by fitting the old shopping center in with something new and it is like a square peg in a round hole. When looking at the Comp Plan, it talks a lot about inclusive community. It is one of the principles in the section detailing vision. There are principles of this Comp Plan: healthy and active communities, sustainable community, and inclusive community. The inclusive community includes a range of housing choices and affordability levels. In the housing and community development section, they talk about inclusive community. Mix of housing types, choices and affordability levels, were listed as strengths, however, the student housing market was blamed for inflating housing costs and creating a lack of housing choices for low to moderate income households and families to rent or buy. In the housing and community development section, the Comp Plan talks about additional concerns from residents regarding the overdevelopment of apartment housing targeted as student rentals, particularly downtown, where there is a desire to see more owner-occupied housing. This is now considered to be in the downtown.

She believes there is somewhat a disconnect between what the community wants and needs and what they are getting here. Although the intent may not to be to market it to students, the intent from the beginning was for this to be student housing. It is being designed for students with four large bedrooms which is throughout the City and considered student housing. This is surrounding a single-family community with high-density student housing, and that is clearly not what the residents want. She does not think the developer can make the argument that it meets the Comp Plan on one hand, and then it does not meet the Comp Plan on the other hand. She believes that is cherry picking, and while she does think this is better than proposals in the past, she does not think this is in the community's best interest, and that is based on what she has heard from her community, who she represents.

Mr. Clifton said he has heard the comments referencing the ugly building on the corner and that it is going to be demolished. He could not agree more than the audience present stating the same. But he would also like to say if this plan were to fail, there is nothing that stops the developer from building that building on the footprint that it now sits as a one-story commercial building. Redeveloping this does not go hand in hand with the notion if the developer does not get approved for the project they cannot do anything else with the property. Mr. Clifton believes that is patently false as they can make changes in parking, in landscaping, and that has nothing to do with the approval of this property.

Mr. Hoffman said that is correct under the current zoning and this agrees this is a good point they can put this building under the current zoning. But he thinks it misses a critical point, and it is a point that he has tried to emphasize throughout this process, and it is that the benefits of having the mixture of uses, the documented benefits that are in the record of having the residential above retail, in terms of reducing traffic, which is exactly what they heard from the community as something that the community is interested in. In terms of allowing this kind of reinvigorated redevelopment, which has been documented. He mentioned as well that Mr. Clifton has seen successful examples. It is the mixture of uses, it is the



synergy of uses and that allows the property owner to market it. It is the collection of objectives that come into play and allow it to meet the community needs and interests.

He said it is frustrating because the developers have made themselves available. They have held two community meetings and he has made himself available to answer questions or concerns. They have a record that went before the Planning Commission with testimony from the meeting. They have letters submitted and testimony during the current meeting. He then goes to dais and hear only two of Ms. Wallace's residents have expressed explicit support for the proposal. He said that is difficult for him to address and it is difficult for him to address concerns if the concerns are never voiced or put on the record. That is exactly why there must be a public process, and if Council is to encourage developers to come forward and participate in this process, there must be value and meaning in that.

He reiterated it is very frustrating to hear and he had said he has tremendous respect for Ms. Wallace during their numerous conversations about the project.

Mr. Clifton asked Mr. Hoffman if he was going to answer his question or if he was demeaning another councilperson.

Mr. Hoffman said at the end of the day, this specific building could be built as a first-floor retail. Whether that is going to have the impact, and whether that is feasible and something that the developers can move forward with remains to be seen. It is not something they have evaluated.

Mr. Clifton said he would agree with just about every point that Mr. Hoffman has brought up about himself. He has set the gold standard upon reaching out to the community, listening to the community, subdividing the property, being available. However, this does not necessarily dictate Council having to agree or disagree with the developer. That is why there is the public process. About the parking waiver report, page three notes 40% of the parking is currently being utilized, but when it is built there will be another 27-parking place deficit over what was already grandfathered and is designated for this property. He asked if there are businesses that generate more traffic and there is a 27-parking place deficit in a parking lot that small, will there be a parking problem created.

Mr. Hoffman said when compiling the parking waiver request assessment, they took counts of what the current uses are and then compared those counts to the occupancy rate that is there today. The counts are then adjusted assuming full occupancy. Then the ATD generation is considered when running the model to determine what the anticipated need is based on those figures. The assumptions are built into the model to come to that conclusion so that they can have the confidence there are more parking spaces than needed at full occupancy.

Christopher Duke, Becker-Morgan Group, project engineer said during the process they conducted parking counts throughout the day. They determined parking occupancy based on the vacancy rate as well, so that was taken into account. The findings suggest the center needed approximately 1.7 spaces per 1,000 square feet. That number was worked into their parking need, and the result was they did arrive at the parking deficit of 27 spaces after the considered grandfathering. Parking is a little bit different than trip generation. They go together, but are not a direct one-to-one correspondence. When ATD trip generation models are run they do consider the existing commercial square footage that is being demolished from the site, being replaced and arrived at about a 2,000-square foot increase in commercial square footage, and in the apartments resulting in the 190-space increase in traffic. He noted 190 trips throughout the day is kind of a drop in the bucket in the traffic-engineering world.

Mr. Clifton said it had been suggested to deed restrict where the tenants could not get a residential parking permit. Mr. Clifton asked Mr. Bilodeau if a deed restriction can apply to the property not individual. Mr. Bilodeau said it would have to be well crafted to make that work.

Ms. Bensley said there have been deed restrictions in the past that have applied not just to individual units but have applied to the property. Examples would be deed restrictions for some projects in the past with certain uses were restricted. While they were permitted under the zoning category, they would not be allowed for that project due to the developer agreeing to a voluntary deed restriction. Other examples might be the International Reading Association open space property, they have a deed restriction that has a 125-foot buffer around the property from any development. That is something they agreed to at the time of that rezoning. She emphasized that any deed restrictions must be voluntarily be entered into by both parties. If a deed restriction was proposed at the current meeting, there would have to be an amendment to the subdivision agreement and it would have to be agreed to by the applicant for it to be in force and effect. Mr. Clifton said all the examples given were deed restrictions that are

applicable to a property that they own, not to individuals with rights in the City that they do not control. Ms. Bensley said the recent project that was approved for Benny Street had the identical deed restriction in the subdivision agreement as far as the restriction of on-street parking permits. That is something that has been done before by this Council.

Mr. Clifton asked what level of LEED construction will the project reach. Mr. Hoffman said the code requires 25 points and they will meet the code requirement on that. In addition, they conveyed to the Planning Commission and they will reiterate tonight, they are examining the electric vehicle charging stations and other green technology for this site. He said there are a lot of layers to electric vehicle charging stations, one of which is will there be payment made at the station and how would it connect with the City. They are amenable to those conversations.

Mr. Clifton asked about a reference on the last page that references if the agreement is found by any court to be void and unenforceable the remaining provisions hereof shall remain in valid in full force. Ms. Bensley said this is standard language that is included in every subdivision agreement.

Mr. Clifton asked about the section noted in item 21 on page 5 stating "Pro-forma hydraulic analysis of downtown conveyance systems for identifying restrictions and providing recommendations for feasibility improvements to the satisfaction of Public Works and Water Resources structures with reference to storm water management." He believes this says if there are additional problems that currently do not exist but are problems that will be brought forward because of development, that they must be identified. He asked if this was correct. Mr. Hoffman said that was not correct and as part of this development the project is actually making drainage better. State law says they cannot make the drainage worse. As part of this development proposal, they are making it better, so they are going above what state law requires. In addition, they are going an additional step further than that by agreeing to study the impact. So even though they have addressed and improved the impacts from the development, they are also going to assist the City by conducting a study of the drainage scenario and recommendations. He said that is information gathering and that is something they will be doing at their cost.

Mr. Clifton wanted to say he was not in support of Newark Shopping Center and was not in support of the building where Walgreens is located because of a 100% parking waiver. Anybody that has used the lots along there, if they would have required the parking there for the residents, can they imagine what that lot would look like today.

Mr. Morehead said he agrees with most of what Ms. Wallace said. The developers of the project have been approachable and Council appreciates it. He noted the Comprehensive Development Plan has an underlying goal and it is buried in the core principles page that they have copied for Council. One of the goals is to specifically, "Encourage a mix of housing choices, both in styles and affordability levels, for new residential developments that is inclusive of different ages and income levels." He believes that to be the true meaning of new urbanism, and that does not mean there is construction to put up one building that caters to one demographic, but that they try to give everyone a place to live wherever it is. Such that the starving artist can live next to the grandmother, next to the family that is downsizing, next to the single-parent family, next to the young professionals that are sharing rent. A place where everybody can live. That is how he perceives new urbanism. He believes they have been attempting to make new urbanism mean mixed-use. That is a piece of it, but that is not all of it. Council has asked for over and over is not something that developers have seemed to want to give them or supply from a cost perspective. He believes it makes more sense to the developers to rent to people that can afford to pay for a bedroom more than he pays for his whole house. He understands that but that is not what Council is asking for. They are asking for variety. There is another core principle here that talks about establishing unique Newark places. He believes this is cherry picking by picking certain things being asked for from this plan. He appreciates the effort that was put into this. He appreciates they asked for input. He appreciates the improved look of the shopping center that is there. The planning Section A, "Recommended Uses" includes commercial, which is what this is now. It includes mixed revenue; it includes active and passive recreation. They could knock everything down and give them a park. He knew they probably do not want to afford that.

Mr. Hoffman said that everything that Mr. Morehead mentioned in terms of goals of the Comp Plan are fair. But the Comp Plan does not say that this one property, this 4.95-acre property must address every single element and every single goal in the Comp Plan. What the Comp Plan does say that this development needs to be consistent with the Comp Plan. He does not think there can be any argument that this development is not consistent with the Comp Plan particularly where the Comp Plan expressly and explicitly calls out mixed use along the South Main Street corridors.

As far as the question before Council of “is this development consistent with the Comp Plan”, it certainly is. This council just approved a rezoning for Benny Street parcels, which is completely different from what the Comp Plan calls for. It does not provide that diversity of housing, but Council went through the steps of the analysis of the rezoning. His point is that when there is a Comp Plan that sets forth goals and asks the question of is this development consistent with the Comp Plan, here, the answer is clearly and unequivocally, yes. Then the question becomes applying the rezoning factors and again when they objectively apply those rezoning factors based on the record before Council it is clear and unequivocal that this rezoning is indeed appropriate.

Mr. Markham said the applicant has been receptive and met with people but he believes it does not sound as if Council is getting what they are asking for. If the zoning is voted down at the meeting, it starts a two-year waiting period for any time of change in zoning. He asked if Council would like to entertain a motion to postpone indefinitely to give the applicant a chance to think about this and come back with something else.

Mr. Chapman asked for an opportunity to comment before this happens.

Mr. Hamilton said he was correct in one part that in the belief mixed urban recommended for downtown. He asked if Council can conditionally rezone something meaning it can be approved if older people are put in there. That is why he wanted to say the developer brought up students first and said that students cannot be discriminated against. Mr. Hamilton said he wanted to balance that out. He believes it comes down to legally saying “Hey, look, they fit this and, it does not have impact; it does not have all the other things they can legally throw up, to say no.” He said he has a whole host of people and he said he informed Messrs. Wittig and Way two or three weeks ago that most of his folks believe this will have an impact.

He said anecdotal evidence can be given and believe this statistic stuff, but when looking at downtown, Main Street, and all those buildings going up and when looking at the houses, and the character of the neighborhoods. For example, they tried to save Center Street. Instead Center Street and all the neighborhood back there is going toward student rentals; despite the claims that putting all these mixed use buildings up there will improve the community and it will not have an impact and it draw students out. It has not worked and there is evidence to prove this.

The neighborhoods around there have been negatively impacted. Council has a decision to make at this meeting and they do not have to absolutely agree that mixed urban for every single parcel. They can get into the courts if they would like to and leave it up to them. Or they can be a good neighbor as they said they are going to be. When he hears it will not add much impact somebody lives 123 feet (he said Mr. Hoffman knows them) from where the building will be with people going in and out all day. He can say that is an impact and will be felt down the streets. He said the legality of this can be argued and he is pretty sure the Comp Plan changes are defensible if some words are put up there and the applicant is trying to minimize the impact, but he believes there will be an impact. He says he does not want a contentious relationship with the developers. He thinks if they are good neighbors they can wait and things may change. He said there are a handful of people in his neighborhood who like the project but the overwhelming amount of people in his district are opposed to this. He told the applicants that and the good they have done has not yet reached the tipping point, where the neighborhood says, “Yes.” He listens and appreciates everything that has been done and helps for the future. He loves the fact that a lot of developers are cooperating with Council, but if they do not agree with their plans, and they do not agree absolutely that it is a lock-step, then they refuse it. They can move on. They can put some other amenities in there. They can do a lot of things, but it is his belief that this Council does not have to approve this. Whether this is just a minimal impact thing, it is a real impact from one point of view. From another point of view, it is a major impact, and it is a major negative impact. He said he will have a hard time voting yes for this.

Mr. Chapman said he has had honor of sitting in this seat for six years, and this is one of the best redevelopment projects that has been before Council. But it is also the roughest he has ever seen Council be to a presenting developer's project. He does not know what is going on below the surface. He remembers three projects in the last six years where there was such sincere, genuine, and diverse support that came out, and waited until the middle of the night to be heard, with no financial gain to be had by coming out and supporting development. These are people that are within earshot and visibility of the shopping center, and are looking for continued improvement. Council has had many projects come before them having with the vast majority of Council districts that oppose it. When that happens, residents show up. The meeting has to be moved because of the anticipation of how many people want to show up and be heard. The timing of how long someone can speak is changed, sometimes down to a minute so that everybody can be heard. He did not see this at this meeting. Council gets letters and emails and get

inundated a few weeks leading up to a decision like this evening including dissenting opinions from neighbors or people from the community. He did not receive one. He believes this is an example of one of most amenable developers that has come before Council. In his opinion, they would fall under the top three without a doubt. He thinks what should have been a leading example of what developers and the Council can achieve together in managing the process in an inclusive way, which has happened over many months, perhaps years in fact, to get to a project that he believes is a fair compromise.

It is his opinion this project is more in line with the Comp Plan than many "by right" plans that come before Council which many Council members have made the frustrating comments of, "They wished our hands were not tied, but the fact that this is a 'by right' plan. It is a terrible plan, but they have to say 'okay'." This plan is far better than many of this. Redevelopment, development itself, is not a charitable giving, and a comment was made on one of these slides in the disconnect that can sometimes happen between what they want and what is economically viable.

Mr. Chapman stated the residents that live 123 feet away, probably bought that house when it was a Friendly's. The impact of people going in and out of Friendly's. Mr. Hamilton said Mr. Chapman's comment was incorrect. Mr. Chapman said, "Fair enough, then they bought it next to the dilapidated purple barn." He said when he was in high school he would go up to Friendly's hooting and hollering probably driving all the neighbors crazy, and they still live there. He said when considering Suburban Plaza area, redevelopment, and the same night the redevelopment, and more directly comparable to this, that same night in 2012, a redevelopment plan in front of Council for the re-façade upgrading of Newark Shopping Center. That headstrongness to also accept a monstrosity of student housing behind it, demolishing the bowling alley. Four out of seven members of Council currently at this dais were part of that meeting of decision, and only two of us said "no".

He noted he lives across the street from Fairfield Shopping Center, which has been a deteriorating site, that is finally getting the upgrades, and he was so excited to be able to walk to shopping and food and entertainment again and it is still a year away. He said he does not visit establishments on Main Street anymore. He does frequent the shops in these mixed urban uses along South Main Street. He said that is where his business is going. He said the proposed Wawa project failed. He believes it ran off a mayor and it ran off developers. A proposed drive-through with the current owners failed. What is currently proposed, he believes is with a responsible and appropriate use; commercial compromise, and they are going to be run off as well. He hopes the developers choose not to because he believes he will paying for it, but he worries that if the City does lose the lawsuit that is likely and justly to follow in a denial at the meeting. Based on the minutes that will be picked apart by anybody looking to do business with the City of Newark tonight, he thinks Council just made a very loud announcement that they are closed for business. It did not matter how much work and extra money, and unnecessary, or at least not "have to do" things that these developers have chosen to do to bring this type of project in inclusion with the community. He is uncertain why any other developers will go through the hurdles ever again. They will ram by-right projects right down Council's throats.

Mr. Markham said this item has been talked to death. He asked if there were any motions to postpone this indefinitely. He said there were none so Council will start with Item 9A and each Council person will have to go individually stating the reason "for" or "against" the Comp Plan Designation.

Mr. Hoffman said for the record is a due process question. He said public comment was allowed and the applicants were not given an opportunity to respond to public comment. He said one of the primary and fundamental problems with this process is that if there are items that are being brought forth in front of Council that Council is being considered that is not in the record, and that has not been presented. That is a fundamental due process concern as the City Solicitor can attest to. At the end of the day, all property owners ask for and what a property owner is entitled to under the Constitution to a fair and full hearing. To offer statements and not have the opportunity for rebuttal, and to have public comment and not have the opportunity to rebuttal. And, more importantly, and most importantly, to have blanket "I heard people say no," and have that be the basis of the decision, is fundamentally flawed. It is improper under the Constitution and at the very least the applicant should be given the opportunity to fully and fairly respond.

Mr. Markham said in his opinion, the developer has significantly more chance to speak in presentation and has responded to the individual Council members. He asked Mr. Bilodeau if he felt it appropriate to allow them extra time. Mr. Bilodeau said there has been abundant time to present and respond. If Mr. Hoffman needs five more minutes, that is fine, but he thinks there has been plenty of back and forth. Mr. Markham asked Mr. Hoffman if he would like an additional three minutes.

Mr. Hoffman said he would like to respond and said at the end of the day there is a legal obligation to base this decision based off the rezoning standards. The project is very clearly in conformity with the Comp Plan. The project is consistent with the development pattern. Goals can be argued but at the end of the day he believes it is clear there are residential misuses in the area. With regard to the impact on adjacent properties, he noted the record is clear. Traffic was discussed and foot effects. The applicant has discussed every specific concern that has come forward. If there are additional specific concerns this Council would like the applicant to address, they request the opportunity to be able to address the specific concerns. Barring that, he thinks the record is clear. The public is clear they have met every single element of the standards for rezoning. This is an appropriate rezoning, and it should be approved. If comes down to fundamental fairness. If there are specific concerns, they need to be provided a full and fair opportunity to address them. Otherwise, it is just a sham of the process. They applicant has address concerns on impact and have addressed concerns on parking, on traffic, on vehicular flow, on area and surrounding uses. Every specific concern, they have addressed. The record is clear to that point.

Mr. Markham asked if the applicant is asking for Council to postpone this indefinitely. Mr. Hoffman said they would like the opportunity to address specific concerns. He wanted to be clear to postpone it for the sake of postponing it, when there are not any concerns does not make any sense. If they postpone enabling the applicant to have an opportunity to address specific concerns, then that makes sense, and they will be amenable to that. He would open it up to Mr. Hamilton and Ms. Wallace who had constituents raise concerns. He asked can the applicant address those concerns and put them on the record.

Mr. Markham asked Mr. Bilodeau if the options at this point in time are to either act upon a motion to postpone indefinitely or to proceed with the vote. He asked if there were any other choices at this time. Mr. Bilodeau said those are the two and he believes the applicant indicated he was willing to abide by postponement if it is a meaningful postponement.

Ms. Bensley said procedurally, there are two types of postponement. If it is the desire is for the applicant to have the opportunity to answer additional questions on the current project in front of Council and have an opportunity to consider those as part of the deliberation, a more appropriate postponement would be to postpone to a specific date. If the desire of Council is to give the applicant the opportunity to amend their project and, perhaps, bring something different to Council, without invoking the two-year restriction on rezoning, then postponing indefinitely would be the appropriate procedural motion at that point in time. Option three would be to vote up or down on what is in front of Council.

Mr. Markham said there is no guarantee the motion to postpone would pass.

Mr. Hoffman said he appreciated the City Secretary's explanation of that. Certainly, a motion to table to allow the applicant specific concerns, the applicant is amenable to. They are requesting an opportunity to respond to specific concerns that are not presently on the record.

Mr. Morehead said his perspective is Council disagrees. The applicant has presented a perspective and he has a different perspective on some counts. For the applicant to address those concerns they would need to come back with a different design. By giving the applicant a postponement indefinitely he is giving the applicant the opportunity to do so. He will make the motion and he reminded the applicant it is their choice at this point in his opinion. He does not believe anyone would say "fifteen of my residents say no and two said yes so therefore they are voting no". There are not going to be those fifteen names coming forward for the applicant to address. That is not what is being talked about.

Mr. Hoffman said he appreciated that. He believes additional conversation would be beneficial and helpful and he would take Mr. Morehead up on that motion.

Ms. Wallace said she is in a difficult position. She said the applicant has been accommodating in a way that other developers have not been. She thinks to a certain extent that may be part of the problem and she hates to say that. There have been people during three meetings, including the first one with Ms. Hadden and people have come to the meetings and spoken. She said she is running for re-election so during her door knocking in her district she has spoken to residents. She noted they are not required to be present. She said that is not the way it works. She is the residents' representative and they have shared their concerns about the project with her.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: THAT ITEMS 9A, 9B, 10A, 10B BE POSTPONED INDEFINITELY.

MOTION PASSED. VOTE: 5 to 1.

Aye – Chapman, Hamilton, Markham, Morehead, Wallace.  
Nay – Clifton  
Absent – Sierer.

22. 9-B. **REQUEST OF RGW, LLC FOR A SPECIAL USE PERMIT FOR 12 APARTMENTS AS PART OF THE PROPOSED MAJOR SUBDIVISION PLAN KNOWN AS THE PARK ‘N’ SHOP AT THE PROPERTY LOCATED AT 275 SOUTH MAIN STREET**
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*(See Item #21 above.)*

23. 10. **RECOMMENDATION FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**

A. Request of RGW, LLC for a Major Subdivision In Order to Demolish an Existing 2,150 Square Foot Vacant Structure and 6,400 Square Feet of the Existing Shopping Center and Construct a Mixed Use Building with 1,600 Square Feet of Retail Space on the First Floor and 10 Four-Bedroom and 2 Two-Bedroom Apartments for a Total of 12 Apartments on the Second and Third Floors and Associated Parking on 4.95 Acres at the Property Known as the Park ‘N’ Shop Located at 275 South Main Street ***(Subdivision Agreement and Resolution Attached) (See 9-A and 9-B and 10-A)***

*(See Item #21 above.)*

24. 10-B. **REQUEST OF RGW, LLC FOR A SPECIAL USE PERMIT FOR 12 APARTMENTS AS PART OF THE PROPOSED MAJOR SUBDIVISION PLAN KNOWN AS THE PARK ‘N’ SHOP AT THE PROPERTY LOCATED AT 275 SOUTH MAIN STREET**
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*(See Item #21 above.)*

25. Ms. Bensley noted there were two agenda items that needed to be covered due to time sensitivity.

MOTION BY MS. WALLACE, SECONDED BY MR. HAMILTON: TO EXTEND THE MEETING.

MOTION PASSED. VOTE: 4 to 2.

Aye – Clifton, Hamilton, Markham, Wallace.  
Nay – Chapman, Morehead  
Absent – Sierer.

Mr. Morehead asked if the meeting was being extended to cover all items.

Mr. Markham said there is no time limit.

26. 9-C. **BILL 18-05 – AN ORDINANCE AMENDING CHAPTER 32, ZONING, CODE OF THE CITY OF NEWARK, DELAWARE, BY AMENDING REGULATIONS FOR WIRELESS FACILITIES IN THE RIGHT OF WAY AND UPDATING REGULATIONS FOR WIRELESS FACILITIES OUTSIDE THE RIGHT OF WAY TO CONFORM TO FEDERAL REGULATIONS**
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**4:15:00**

Mike Roberts, Attorney, Cohen Law Group, Pittsburgh, PA, reported they are a law firm specializing in cable telecommunications and broadband matters. The firm has been assisting the City with the development of a wireless facilities ordinance that has been enacted as well as the amendments being presented. The amendments have been created based on discussions with industry representatives, specifically from Verizon, AT&T, and a company called Mobilitie, which is one of the larger operators within the wireless facility field; as well as internal discussions with City staff, his law firm, as well as recommendations from the Planning Commission.

He said largely a big part of the amendments are administrative. He has highlighted a few key changes that were made that are more of the significant changes. Specifically, there has been a distinction added for towers within the public rights of way. Towers over thirty-five feet in height require Special Use Permit approval. Towers less than thirty-five feet in height located in the public right-of-way require only administrative approval and they are exempted from specific design and maintenance requirements. This

is mostly because they are going to be in the form of what are known as monopoles. They are essentially what looks like a utility pole with an antenna attached to it and they cannot possibly comply with certain requirements or are otherwise exempted by federal law from certain requirements that do apply to larger towers. To prevent what would effectively be a prohibition if they were to say these towers must comply with a requirement they cannot possibly do so they have exempted from those requirements.

Mr. Roberts said the phrase “or capacity” following the coverage language in the gap of coverage requirement, which requires an applicant show there is a gap in wireless coverage. The reason is coverage and capacity are two different things. As demand for wireless service increases, capacity becomes more important because they need to ensure coverage is effectively available for all residents within the city. They added a thirty-day failure to respond language to the co-location attempt requirement that says the applicant must try to co-locate on an existing structure before commencing construction of a new tower. One of the comments raised by the industry was that what happens a lot of times is they will contact the other structure and they will receive no response at all. They do not want to extend that indefinitely, so they added a thirty-day failure to reply, effectively being a denial for that requirement.

Also changed was the setback requirement for properties within the initial draft for churches, libraries, schools, nursing homes, hospitals, or residentially zoned lots. There was a three-hundred-foot flat set back requirement. The amendments changed that to a one and one-half times the height of the tower setback requirement for across the board any tower. The reason being that if there is going to be a forty-foot tower or fifty-foot tower, the three-hundred-foot setback was excessive. Beyond that, the rest are largely administrative. He thinks the largest one that cleans everything up for purposes of the ordinance operating moving forward is they added a waiver where Council can exempt an applicant from any of the requirements on the ordinance for good cause on request. If there is something that cannot be complied with rather than having be a default ban on the tower itself, Council itself can hear it on a case to case basis and make the decision appropriately.

Ms. Bensley said she noticed one amendment that will need to made to the bill. In Amendment 3, the language in the first paragraph of the amendment language should read that it would amend those sections by deleting the existing subsections in their entirety and adding the underscored text as follows in the respective subsections. That language should be amended because the sections are being removed in their entirety and there is no deleting other stricken text.

Mr. Morehead said Council got in front of this and put in an ordinance that stacked the deck in the City’s protection and the protection of the residents and it is practically 100%. This document undoes a significant number of these protections and he believes it has gone to the other extreme. He said Mr. Roberts’ summary was partially accurate. There are parts that he is curious why they are not accurate. For example, three-hundred fifty feet or three times the height of the tower, whichever is greater when Mr. Roberts said three-hundred from a residential. Now it does not mention residential at all. Council needs to understand this document they are looking at would allow a thirty-five-foot pole to be put in your front yard. If they look at your mortgage survey, the lot ends before the sidewalk. The homeowner does not own that land. The City has an easement on that land and according to the definitions, the public right of way includes that easement. These poles could go in someone’s front yard. Not only one pole, but they could get a pole for Verizon, they can get a second pole for AT&T, and they could get a third pole for Mobilitie, the way the ordinance reads. He strongly asks Council that they need a meeting ground. Currently the City is extremely well protected. If the ordinance is passed the City will have minimal protections at best. There needs to be something in between.

Ms. Wallace said she is looking for some input from staff on why they are taking back some of these changes that were only recently made as this proposed ordinance is substantially different than what was passed from this year. Ms. Gray said these were the Planning Commission’s recommendations. Some of the changes were from industry regarding, for example, the request for amendments to have administrative approval for the towers that are thirty-five feet or less. That was an industry request. That was also reviewed by Planning Commission, they thought that was reasonable. The provision that Mr. Morehead was talking about was for towers outside of the right of way. The Planning Commission had a lot of discussion on design regulations and the proposed change includes all zoning districts. They thought it was reasonable to reduce the setback from three hundred and fifty feet to one hundred and fifty feet given the discussion of Planning Commission regarding this provision included mostly the fall area.

Mr. Morehead said it is not three hundred and fifty feet. Its three times the height of the tower or three hundred-fifty feet, whichever is greater. When the towers are taller than two hundred feet that equates to six hundred feet.

Ms. Gray said the current ordinance restricts towers to one hundred seventy-five feet and a variance could be obtained to go higher.

Mr. Morehead referenced the comment by the City Secretary about the fact that the wording in Amendment 3 is not correct. The effect of that is that Council does not have the documentation to see what this document was and what the result is. It is not there. He knows it is there because he asked for it the several days prior and he compared the two documents. He felt Council was making an uninformed decision about where they are coming from, and where they are going with this document.

Mr. Markham suggested only doing Amendment 1 which will extend the bill. Then Council can address all the other amendments later. The bill will stay in force, which is probably the biggest concern here. Mr. Chapman said due to the last hour and the discrepancies being discussed that is a good idea.

Ms. Gray said staff did include Exhibit 1 for Amendment 3.

There was no public comment.

Ms. Bensley said the appropriate amendment may be to amend the language in Amendment 1 to end the last sentence at the word "permanent", delete "except for the amendments below and to remove Amendments 2 and 3 from the ordinance as a whole.

MOTION BY MR. MOREHEAD, SECONDED BY MR. HAMILTON: TO AMEND THE LANGUAGE IN AMENDMENT 1 TO END THE LAST SENTENCE AT THE WORD "PERMANENT" AND TO REMOVE AMENDMENTS 2 AND 3 FROM THE ORDINANCE.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.  
Nay – 0.  
Absent – Sierer.

MOTION BY MR. CHAPMAN, SECONDED BY MS. WALLACE: TO APPROVE THE ORDINANCE AS AMENDED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.  
Nay – 0.  
Absent – Sierer.

**27. 9-D. BILL 18-06 – AN ORDINANCE AMENDING THE AMENDED PENSION PLAN FOR EMPLOYEES OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE CONTRIBUTIONS OF MANAGEMENT EMPLOYEES TO THE CITY OF NEWARK PENSION PLAN**

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**4:29:43**

Ms. Bensley read the bill into the record.

Mr. Haines said this increases the employee contribution as outlined in Bill 18-06.

Mr. Morehead asked if this maximizes Council member's ability to put in no more than 3.5%. Mr. Haines said Employees Council is the previous name for CWA when they were unaffiliated prior to being a part of CWA 1036.

There was no public comment.

MOTION BY MR. CHAPMAN, SECONDED BY MR. CLIFTON: TO APPROVE BILL 18-06, AN ORDINANCE AMENDING THE AMENDED PENSION PLAN FOR EMPLOYEES OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE CONTRIBUTIONS OF MANAGEMENT EMPLOYEES TO THE CITY OF NEWARK PENSION PLAN.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.



Nay – 0.  
Absent – Sierer.

28. 9-E. **BILL 18-07 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, TO PERMIT POLICE CANDIDATES TO TAKE THE WRITTEN ASSESSMENT TEST WITH SPECIFIC PRIOR MILITARY SERVICE**
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**4:31:14**

There was no discussion from the table and no public comment.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE ORDINANCE BE APPROVED AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hamilton, Markham, Morehead, Wallace.  
Nay – 0.  
Absent – Sierer.

29. 11-B. Others: None

30. Meeting adjourned at 11:33 p.m.

Renee K. Bensley, CMC  
Director of Legislative Services  
City Secretary

/tas